88-765

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

No. A-160

THANH VONG HOAI

Petitioner,

v.

THANH VAN VO; THACH DUY NGUYEN; MY-LINH D. SOLAND; NGUYEN THI BACH LUU; THANH VAN VO, d/b/a SUNTECH SUNOCO, INC.;AND MICHAEL ARIF,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS (FOURTH CIRCUIT)

LAURENCE A. ELGIN
JOHN D. HEMENWAY
4816 Rodman St., N.W.
Washington, D.C. 20016
(202) 371-6710

QUESTIONS PRESENTED

1. Can separate criminal acts, more than two in number, where many are even different crimes, be held to be not a "pattern of racketeering activity" without violating this Court's use of the standard of 18 U.S.C. 3575(e) in Sedima. S.P.R.L. v. Imrex Co. 473 US 479 (1985) and the better case law where there is a split between the decisions in this case below and those in other circuits ?

2. Where allegations showing a de facto "enterprise" in a RICO claim are such that substantially they "coalesce" with the allegations tending to show the "pattern of racketeering activity" as noted as may happen by this Court in United States v. Turkette 452 US 576 (1981) and the allegations that thus substantially coalesce provide the primary showing in the complaint of both

separate things, may the lower court dismiss the complaint nonetheless for failure to show both an "enterprise" and a "pattern of racketeering activity" ?

3. May the enterprise requirement of 18 U.S.C. 1962 (c) be imposed upon 18 U.S.C. 1962 (a) and (b) ?

4. May lower court judges use requirements of showing of "enterprise" and "pattern of racketeering activity" post Sedima in a manner not contemplated by Congress in the same way that they used a requirement of "racketeering injury" prior to this Court's decision in Sedima ?

TABLE OF CONTENTS

HEADING	PAGE
QUESTIONS PRESENTED	-QP-1-
TABLE OF CONTENTS	TCON-1
TABLE OF AUTHORITIES	TAUT-1
I.REPORTS BELOW	1
II.GROUNDS OF JURISDICTION	1
(i) DATE OF JUDGMENT	1
(ii) DATES OF REHEARING DENIAL AND EXTENSION OF TIME FOR CERT PETITION	1
III. STATUTES INVOLVED	1
IV. STATEMENT OF THE CASE	1
V. ARGUMENT	1

TABLE OF AUTHORITIES

HEADING	PAGE
CASES	
Bank of America v. Touche Ross & Co. 782 F2d 966	24, 25
Ft. Wayne Books v. Indiana 504 NE2d 559, docket no. 87-470, Scotus	23
Hobson v. United States 825 F2d 364 (CA 11 1987) docket no. 87-1051 Scotus	23, 24
Sappenfield v. Indiana 505 NE2d 504, docket no. 87-614, Scotus	23
Sedima, S.P.R.L. v. Imrex Co. 473 US 479 (1985)	-QP-1- 21 24, 25
United States v. Licavoli 725 F2d 1040 (CA 6 1983)	14
United States v. Moeller 402 F Supp 49	27
United States v. Parness 503 F2d 430 (CA 2 1974)	27
United States v. Phillips 664 F2d 971 (CA 11 1981)	14, 27, 28
United States v. Starnes 644 F2d 673 (CA 7 1981)	28
United States v. Turkette 452 US 576 (1981)	-QP-1-,

United States v. Watchmaker
761 F2d 1459 (CA 11 1985) 14, 25, 26

United States v. Weatherspoon
581 F2d 595 (CA 7 1978) 28

STATUTES

RICO SERIATIM

PREDICATE ACT STATUTES 1

I. No reports of the opinions below.

II. GROUNDS ON WHICH THE JURISDICTION OF THE COURT IS INVOKED:

(i) DATE OF JUDGMENT OR DECREE:

May 19, 1988, entered the same day.

(ii) DATE OF ORDER DENYING REHEARING AND DATE OF ORDER GRANTING EXTENSION OF TIME IN WHICH TO PETITION FOR CERTIORARI:

Order denying rehearing filed June 14, 1988. Order granting extension of time in which to petition signed by the Chief Justice August 24, 1988.

(iv) 28 U.S.C. 1254(1).

III. STATUTES WHICH THE CASE INVOLVES:

The RICO statute, 18 U.S.C. 1961 et seq.; "predicate act" statutes under RICO: 18 U. S.C. 1341, 1343, 1503, 1951, 1952; Va. and D.C. statutes regarding threats of murder and extortion: D.C. Code Secs. 22-2401, 2403, 2404 and 3851, Va. Code Secs. 18.2-30 through 18.2-32 and 18.2-59, 18.2-60.

IV. STATEMENT OF THE CASE

This is a case brought by the petitioner as plaintiff under the RICO statute, 28 U.S.C., et seq. In many ways the allegations of his complaint, including a lengthy affidavit incorporated into it by reference (See appendix II and supplemental appendix IV) and filed with it comprise the very essence of that statute and the intent of Congress in drafting it. Petitioner was threatened with murder, both in D.C. and Virginia, on several occasions, (See app. II, supp. IV, paras. 14, 113-114, 125-126, 448-449, 580, 649 and was extorted out of two business interests by various frauds and then, as he began to question these deceits and ask the defendants to honor their commitments where necessary to the continuation of the businesses and, ultimately, with regard to the one

businss, a Sunoco station, to sell out their ostensible interest as a lender and those working with him, and leave it in his hands alone, the threats of murder commenced and did not let up until he was stripped of both business interests.

The Sunoco station was a franchise that petitioner had just received after applying for it with the knowledge of the defendants (though he only told three of them about and did not know they were working together in the manner he alleges until later), though he has a record of work in services stations and related businesses, beginning as a trainee in 1976 and moving up through station manager, area manager, independent dealer of smaller stations, including a prior Sunoco dealership, and then just beginning the station dealership involved here, a large and much more profitable

one, at least potentially, and a major turning point in this career. For even though the station had problems such as pilferage and was in a "tough" neighborhood, it was on a major traffic artery, had a large potential customer base in the passing traffic and a location also that made it suitable for extensive sales of mechanical services and a convenience store.

Using the pretense of a friendly and non-onerous loan between Vietnamese businessmen, one of the defendants induced plaintiff-petitioner to let him help with the start-up of this large gas station franchise by a "soft" loan to be paid back when the station was up and runnng profitably after a year or so, at which time, if principal could not be paid back and had to be delayed further, interest would be paid at ten percent.

When this offer was accepted by plaintiff-petitioner, who had about half the approximately $70,000.00 in capital he had been told by Sunoco he would need through his family, this particular defendant who promised this loan, one Thanh Vanh Vo, insisted, after agreeing to set up the new station's bank account in order to help out, that he, Vo, would control the bank account and be its only signator and, moreover, he refused to let plaintiff see the account statements or records, all as "security" for his "loan." This defendant Vo took the newly opened stations proceeds and deposited them in this account of the station which only he had access to. He claimed to the plaintiff-petitioner that he had made the "loan" he had promised by depositing the $35,000.00 in question into the station account. Plaintiff-petitioner thus never

saw any evidence that the promised loan had ever been made and as a result of subsequent events which he alleges, came to realize that the "loan" never existed and that, at the very least, the most that was ever put into the bank account by Vo was a few thousand dollars to "salt" it and lead plaintiff on.

When plaintiff-petitioner was faced with the return of the first large check drawn on the station account as thus controlled by the man Vo, a check to Sunoco for gasoline, for insufficient funds, he realized that something was wrong and began to question the man Vo and another man, Thach, and demand that they show him what they had put into the gas station in the way of actual loans and inventory and he, the plaintiff-petitioner Hoai, would get other money and buy them out by repaying what they

had put in.

The response was exaggerated claims of hundreds of thousands of dollars invested in the station which had to be repaid by plaintiff Hoai, these two defendants insisted, accompanied by threats of murder and mayhem upon the person of Hoai if he did not immediately pay these extortionate sums or, in the alternative, plaintiff-petitioner could sell the franchise to Vo for one dollar.

Eventually plaintiff-petitioner was compelled by threats of murder and mayhem to sign a document turning over the station to Vo for one dollar, a document which plaintiff believed then, and believes now to be illegal, not only because exacted under threats of murder, but also because in violation of applicable statutes and the franchise agreement, all of which required the

notification of Sunoco 90 days in advance of any possible transfer and the checking out of the business experience and creditworthiness of the intended transferee.

After the compulsory signing of this document under duress, plaintiff-petitioner was within weeks forced by threats of violence and murder to cease coming to his gas station franchise altogether and to de facto turn it over to the man Vo and never go there.

In the meantime, from the time plaintiff-petitioner was applying for the franchise on, unbeknownst to plaintiff-petitioner at first, the man Vo was working with the man Thach behind the scenes and at one point during these developments Thach was introduced to petitioner Hoai as a banker, in fact as the President and owner of the McLean

Bank of McLean, Virginia, the same bank where Vo had placed the gas station account into which he claimed to be depositing the station proceeds and "securing" them under his signature as the only person with access to the account.

But, however, at the same time also, defendant Thach was working with the other two principal defendants of the "core" group of four comprising the de facto enterprise in question, the man and wife, defendants Minh and Luu, in a scheme designed to simultaneously deprive plaintiff Hoai of the capital available to him through his family, eventually some $49,000.00 which was lost to the defendants. This was accoplished in this way: Minh and Luu approached petitioner and petitioner's wife and induced them, after much persuasion to overcome the

reluctance of the petitioner and his wife to be involved in too many things at once, to purchase an oriental specialty food store business in the form of the right to occupy and sell in a business location for a number of such ethnic businesses controlled by Minh and Luu in the Vietnamese "strip" in Arlington, Virginia. It was during these discussions and the fruitless attempts of petitioner to obtain the promised lease for this business location that the defendant Thach was introduced to petitioner and his wife as the "banker" who was going to lend them the money to, in American terms, "bootstrap" the purchase of the grocery store business so that the capital would not be tied up for so long as to make it difficult to get the gas station business going and the food business would soon produce daily

revenues that could be used to expand the gas station business. The defendant Vo was told by plaintiff-petitioner of the purchase of the food business and encouraged plaintiff-petitioner to go ahead and purchase and operate it to get money flowing. Unbeknownst to plaintiff-petitioner all four of these core defendants were working together to drain off his capital, get control of it and take both businesses for their own gain. This was accomplished as follows: When petitioner Hoai and his wife took over the food store business they discovered that the inventory, contrary to representations, was unfit for human consumption and that the credit of the defendants Minh and Luu with the oriental food wholesalers, contrary also to representations, was negative, with many, many long unpaid bills. Therefore, as

schemingly anticipated by defendants, plaintiff and his wife were compelled by economic necessity to put their capital into new inventory to get the food store business going.

After plaintiff and his wife for several months had built up this business and invested over $49,000.00 in it in inventory and the like, defendants, again by the direct and indirect, subtle and obvious, use of threats of murder and violence, took back the business, breaking the locks and seizing the inventory, and sold the inventory off for their own profit and then "resold" the business to third parties.

Plaintiff-petitioner Hoai detailed this entire complex scheme, including the several threats of murder, in a lengthy complaint accompanied by a detailed affidavit which was incorporated into the

complaint. In the words of this Court in United States v. Turkette 452 US 576 (1981) "the proof used to establish these separate elements ["enterprise" and "pattern of racketeering injury"] may in particular cases coalesce." Here they did so "coalesce", as this Court said they might and plaintiff addressed the question in his complaint in the district court by a lengthy and detailed complaint accompanied by a lengthier affidavit showing just how the proof of what he had been through at the hands of the defendants showed both an enterprise and a pattern of racketeering activity on their part.

In addition the complaint and affidavit set out the other instances that defendants had told plaintiff about or that he had observed, of similar types of racketeering activity by the defendants

in their various subgroups. See App. II. and Supp. App. IV. paras. 129-139, 205-8, 216, 232, 531. The other defendants were included as having assisted the core group of four in their pattern of racketeering activity. For each "secondary" defendant a separate count or section of allegations was included in the original complaint.

In terms of the standard set out in the eleventh circuit in United States v. Watchmaker 761 F2d 1459 (1985) at 1475, of

> whether each act constitutes "a separate violation of the [state or federal] statute" governing the conduct in question. United States v. Phillips, supra, 664 F.2d at 1039. See also United States v. Licavoli, 725 F.2d 1040 (6th Cir.), cert denied, sub nom. Calandra v. United States, ____ U.S.____, 104 S.Ct. 3535, 82 L.Ed.2d 840 (1984) (same standard). (brackets in original. The full cite of Phillips is 664 F.2d 971 (1981).)

plaintiff-petitioner alleged well over the required two predicate acts, whether one considers the fully fleshed out allegations of his original complaint or the sparse summary demanded by the court below as stated in his amended complaint. We have already cited above those allegations of threats of murder, summarized sparsely ultimately in the amended complaint demanded by the lower court.

In addition there were the following (paras. in App. II and Supp. App. IV): threats of extortion and extortion: 393-396, 448-449, 473-475, 546, 549-550, 580, 113-114, 649, 125-126. Extortionate credit transactions: 462-470. Mail fraud: Soland allegations. Wire fraud: 387-392; 217-220, 564-568 and many others where there were phone calls back and forth between the station in D.C. and the

food store and the homes in Virginia. Also the takeover of the station and extortion of it and then the takeover of the food store business and inventory were acts of interference with commerce. Paras. 181, 647-659.

Plaintiff-petitioner Hoai filed his complaint on March 25, 1987, in the Eastern District of Virginia, Alexandria Division. All defendants save defendant My-Linh Soland and the anonymously named John Doe defendants, the "Cowboys", answered. But when defendant Soland moved to dismiss based largely on Rule 8 allegations relating to the length of the complaint, the others followed suit despite having already answered.

The dismissal motions were answered and then came on for hearing before the Honorable Claude Hilton on May 8, 1987. After briefly listening to arguments from

both sides Judge Hilton indicated that in these RICO complaints his attention span flagged after 35 pages and indicated also that he thought the wrongs alleged were all one scheme and that there might be a problem with showing the necessary "pattern" of racketeering activity. He dismissed with leave to file a new complaint. No separate opinion was filed by the lower court, only a reference to the reasons given from the bench.

The new complaint was refiled May 22, 1987, and again was met with dismissal motions, this time without any answering. It was a sparse complaint, with all of the prior allegations highly summarized, almost to the point of sterility. The abundance of detail previously provided was necessarily eliminated and the pages came down to almost the 35 clearly signalled by the judge as what he wanted

to see.

On July 2, 1987, the second set of dismissal motion, those addressed to the sparse, amended complaint, came on before Judge Hilton and he again listened briefly to arguments of counsel, then he dismissed, stating from the bench that plaintiff had shown no "enterprise" and no pattern of racketeering activity inasmuch as the scheme was all one scheme, in which plaintiff set out to buy two businesses and got defrauded of his money, thus setting the scene for the ensuing appeal to the fourth circuit and the present petition, addressed solely to the questions of "enterprise" and "pattern of racketeering activity." The Fourth Circuit affirmed, after briefing and oral argument, without adding much additional comment and then denied the subsequent petition for rehearing, which

incorporated also dramatic new evidence in that one of the core defendants, Luu, had contacted petitioner and one of his counsel, John D. Hemenway, and had admitted, in a tape recorded session, the existence of the enterprise and had filled in additional details, theretofore unknown to plaintiff-petitioner, of the pattern of racketeering activity.[1]

V. ARGUMENT

The facts of this case are really quite incredible. Plaintiff-petitioner has alleged in his complaint a series of events and transactions embracing over a dozen identifiable predicate acts as defined in the statute and yet the lower courts have told him that he has alleged

[1]It is also worthy of note that defendant Soland, while the matter was still pending before the eastern district, before the dismissal, attempted to forge and alter evidence, leading to a motion to produce and seal by the plaintiff and augmentation of his then pending complaint against her before the bar.

no pattern of racketeering activity. He has alleged clearly a de facto grouping of individuals who not only engaged in such predicate acts with relation to him but, on their own say so, had engaged in such acts with relation to others. This is precisely the kind of wrongful activity for which the statute is intended to provide civil as well as criminal remedies. It would be harder to find a clearer example of the kind of behavior the Congress was aiming at in passing RICO. Indeed, two of the defendants here boasted to the plaintiff of their forming of a Vietnamese version of the Mafia, a practice at which the statute was specifically aimed.

Nonetheless, practically without comment the Honorable judge of the Eastern District of Virginia dismissed petitioner Hoai's complaint and the 4th

Circuit affirmed. Clearly there is a split in the circuits here and just as evidently, there is an attempt here to erect a standard not in the statute in order to eliminate cases that is not in accord with the intent of Congress in the same manner as the concept of "racketeering injury" was being used before this Court struck it down in Sedima, S.P.R.L. v. Imrex Co. 473 US 479 (1985). This is a particularly dangerous unwarranted standard, worse than that struck down in Sedima with regard to the "pattern" requirement, because, as this case illustrates, it allows a lower court to dismiss precisely that complaint which alleges activities fitting the pattern Congress had in mind while it would require the trial of much of the famous "garden variety" fraud which has plagued the execution of the statute in practice.

For it is precisely those who aspire to the organization and style of the Mafia who carry out single schemes through multiple indictable offenses or the threat of such offenses as here with the threats of murder on several occasions.

The problem is the same here with regard to the finding of no enterprise. Do we have to wait until there is a board of directors in some U.S. city uniting all the Vietnamese "little Mafias" before the Act is applicable. We scarcely think so. Indeed if the purpose of RICO is to be effected then it would seem extremely important that it be usable by those victimized by aspiring criminal groups before they reach their goal of mafia-style predominance not after.

The existence of a split in the circuits here on the question of "pattern of racketeering activity" is evident in

light of the case bound over from the Court's last term, Hobson v. U.S. docket no. 87-1051, reported below as United States v. Hobson 825 F2d 364 (CA 11 1987), in which the lead question before this court is that of pattern of racketeering activity, and a pair of cases (if newspaper accounts are to be believed) argued before this Court on October 3 of this year involving the Indiana RICO act which is patterned after the federal, Ft. Wayne Books v. Indiana and Sappenfield v. Indiana 87-470 and 87-614 respectively. Reported below, respectively, at 504 NE2d 559, 55 LW 2531 and 505 NE2d 504.

If we look at how the question is treated in Hobson we see the enormous split between a number of the circuits and the 4th as it treated petitioner's case on the question of pattern of

racketeering injury. In Hobson the 11th Circuit clearly enunciated its rule, at note 2, p. 366, id. as "that two separate crimes clearly constitute two separate acts for purposes of RICO. See Bank of America v. Touche Ross & Co., 782 F2d 966, 971 (11th Cir.1986)." In Touche Ross the 11th circuit considered its rule in light of the comments of this Court in deciding Sedima, supra, and commented as follows:

> Defendants urge this court to adopt a rule under which the predicate acts of must occur in different criminal episodes in order to satisfy the pattern requirement. In this case all the alleged acts of wire and mail fraud were part of a single scheme. Defendants' interpretation, however, not only ignores the language of Sec. 3575(e) quoted by the Sedima Court but also contradicts the rule of this circuit. Acts that are part of the same scheme or transaction can qualify as distinct predicate acts.
>
> The standard which has been applied in this Circuit is whether each act constitutes

> "a separate violation of the [state or federal] statute governing the conduct in question.... If distinct statutory violations are found, the predicate acts will be considered to be distinct irrespective of the circumstances under which they arose.

U.S. v. Watchmaker, 761 F.2d at 1475.

Indeed, as the Touche Ross opinion pointed out this Court quoted from 18 U.S.C. Sec. 3575(3) in its Sedima opinion, a section which defines "criminal conduct" as "form[ing] a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events. (emphasis added) Sedima, supra 105 S.Ct. at 3285, n. 14. Hence the very thing that the judge below in this case

used to dismiss the case, the interconnectedness of the scheme perpetrated against plaintiff, is actually what defines the pattern of racketeering activity as existing. It is definitely not a rationale for declaring that the required pattern of racketeering activity does not exist, which is what was held below. The decisions below turn this statute from its meaning by 180 degrees on this point.

Since the courts below do not articulate their reasoning, it is hard to tell, but if the shortness of time encompassed by the speed with which the defendants accomplished their aim of defrauding plaintiff-petitioner here is of concern that to is answered in Watchmaker at 1475:

> As the government notes most courts have rejected the claim that predicate acts which are proximate in time do not demonstrate the

"continuity" necessary for proof of a RICO offense. See United States v. Parness, 503 F.2d 430 (2d Cir.1974), cert. denied, 419 U.S. 1105, 95 S.Ct. 775, 42 L.Ed.2d 801 (1975)(two acts of interstate transportation of stolen property five days apart sufficient to establish RICO violation; United States v. Moeller, 402 F.Supp. 49, 57-58 (D.Conn.1975)(one act of arson and one act of kidnapping on same day sufficient to establish RICO violation).

The court then went on to address the "same scheme" rationale used here by Judge Hilton in dismissing plaintiff's case:

Courts have also rejected the argument that acts which are part of the same scheme or transaction cannot qualify as distinct predicate acts. See United States v. Phillips, supra, 664 F.2d at 1038-39 (describing case in which several mailings in course of single mail fraud constituted separate acts and case in which single arson constituted multiple predicate acts because of violation of mail fraud and interstate travel laws in course of planning and executing arson).

In Phillips at the place cited the 11th circuit in turn relied upon two 7th circuit cases: United States v. Starnes, 644 F.2d 673, 677-78 (1981), and United States v. Weatherspoon, 581 F.2d 595, 601-02 (1978), for the proposition that multiple acts in furtherance of a single scheme of arson or fraud, and particularly of fraud against a single individual, establish the required pattern of racketeering activity.

So not only is there a split in the circuits on this point, there is a large gap. For in this case the judge in the Eastern District used the same rationale which other circuits say shows the requisite pattern of racketeering activity and used it as a rationale for saying that there was no pattern of racketeering activity.

When we turn to the other of the two reasons given for the dismissal as upheld in the circuit court without comment -- the failure to allege an enterprise -- we see similar error.

In the first place the dismissal, unsupported as it was by any reasoning that would inform us as to the support for the finding of lack of enterprise, ignores the fact that there are allegations in the complaint below under subsections (a) and (b) of 18 U.S.C. 1962, neither of which require the showing of enterprise that subsection (c) does.

But even if we lay that aside, plaintiff clearly has alleged a de facto enterprise. The lower courts seem to have confused the fact that the proof of the existence of that enterprise as visible to plaintiff, "coalesce[s]", to

use the word used by this Court in Turkette, supra, with the proof visible to him of the pattern of racketeering activity in many respects. But, as this Court pointed out, that does not mean that they are the same thing. Plaintiff-petitioner alleged combinations of the four main defendants in which they defrauded or wronged not only him but others. It is not of moment that much of this was based on admissions that defendants himself made to him in the course of trying to intimidate him. Most importantly, he charges their de facto enterprises with taking over his two business interests and the de facto entity of the four primary players with their secondary helpers is not and was not the same as either of those entities.

He also alleged that the gas station was an enterprise that the individual

defendants took over that was a separate entity as defendant Vo incorporated it, from them. He alleged that the two defendants, in the course of alternately cajoling him to join them and threatening his life, told him that they were like the Italian mafia. Further, under the plain wording of the definition in the statute an individual may be an enterprise and here he has alleged just that with regard to allegations of more than two predicate acts against Vo, Thach, Minh, Luu, Soland and Arif.

Taken together, the use by the lower courts here of the requirements of "pattern of racketeering activity" and "enterprise" constitutes an attempt to revive the discredited notion, struck down by this Court in Sedima, that there is some standard apart from the clear language of the statute that courts can

impose to dispose of the bulk of the RICO cases that are brought.[2] Here the improper standard being imposed is more insidious than that struck down in Sedima, as we have pointed out in that as opposed to requiring an excessive amount of racketeering activity it would seem to bar cases clearly involving racketeering activity where more disconnected activity which is not of the kind contemplated by Congress in RICO could be the subject of a suit which could go forward.

Therefore, we respectfully request that this Court grant the petitioner's request for a writ of certiorari and remand this case to the Eastern District of Virginia with findings that petitioner has shown

[2]It appears that there have been only two RICO cases in the Eastern District of Virginia that have survived dismissal. One was settled out and the other went to trial and was tried by one of the attorneys for plaintiff in this case, Mr. Paleos.

the required pattern of racketeering activity and the required enterprise and instruct that court to proceed without further delay.

Respectfully submitted.

Laurence A. Elgin
4816 Rodman Street, N.W.
Washington, D.C. 20016

On the brief:
John D. Hemenway
4816 Rodman Street, N.W.
Washington, D.C. 20016

CERTIFICATE OF SERVICE UNDER RULE 28

I hereby certify that I am a member of the bar of this Court (formerly at 2762 Woodley Place, N.W., Washington, D.C. 20008) and that I have served by United States mail, first class, postage prepaid, this 12th day of October, 1988, true and accurate copies of the foregoing Petition for the Writ of Certiorari, together with the accompanying appendices, 3 copies for each defendant separately represented, upon the following counsel of record below: Alan Yamamoto, Esquire, 9677 Main Street, Suite B, Fairfax, Virginia 22030; Alan Croft, Esquire, P.O. Box 547, Fairfax, Virginia 22030; Thomas A. Gentile, Esquire, P.O. Box 612, Arlington, Virginia 22216.

Laurence A. Elgin

RELEVANT STATUTES

The RICO STATUTES, 18 U.S.C. et seq.:

Sec. 1961. Definitions

As used in this chapter [18 USC Secs. 1961 et seq.] --

(1) "racketeering activity" means (A) any act or threat involving murder,..,robbery,.., extortion..., which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ..., sections 891-894 (relating to extortionate credit transactions),..., sectio 1341 (relating to mail fraud), sectio 1343 (relating to wire fraud), section 1503 (relating to the obstruction of justice, ..., section 1951 (relating to interference with commerce, robbery or extortion),...

Sec. 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest,directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which engages in, or the activities of which affect, interstate or foreign commerce....

(b) It shall be unlawful for any person through a pattern of racketeering activity ... to acquire or maintain,

directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity....

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a),(b), or (c) of this section.

Sec. 1964. Civil remedies

....

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

88-765

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM,1988

No. A-160

THANH VONG HOAI,

Petitioner,

v.

THANH VAN VO; THACH DUY NGUYEN; MY-LINH D. SOLAND; NGUYEN THI BACH LUU; THANH VAN VO, d/b/a SUNTECH SUNOCO,INC.;AND MICHAEL ARIF,

Respondents.

ANNEX NUMBER I TO

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
(FOURTH CIRCUIT)

LAURENCE A ELGIN
JOHN D. HEMENWAY
4816 Rodman St., N.W
Washington, D.C. 200

TABLE OF CONTENTS FOR ANNEX NUMBER I

U.S. DISTRICT COURT ORDER(ED Va.) 1
May 8, 1987

U.S. DISTRICT COURT ORDER(ED Va.) 2
July 2, 1987

U.S. Ct. App. (4th Cir.) Appeal 3
Decided May 19, 1988

Judgment, US Ct. App. (4th Cir.) 5
May 19, 1988

Petition for Rehearing before 6
U.S. Ct. App. (4th Cir)
(June 14, 1988)

Exerpt from Hearing of May 8,1987..... 8
Before J. Hilton, USDC (ED Va)

Exerpt from Hearing of July 2, 1987.....10
Before J. Hilton, USDC (ED Va)

Certificate of Service to Counsel 12

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
(ALEXANDRIA DIVISION)

Civil Action Number
87-0294-A

THANH VONG HOAI,
Plaintiff,

v.

THANH VAN VO, et al.,
Defendants.

ORDER

This matter came before the Court on May 8, 1987, on defendants' motion to dismiss and plaintiff's motion to amend the complaint. For reasons stated from the bench, it is hereby

ORDERED that the plaintiff is GRANTED ten (10) days in which to file an amended complaint and the defendants to answer twenty (20) days thereafter.

/s/ Claude M. Hilton
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia

Date: May 8, 1987

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
(ALEXANDRIA DIVISION)

Civil Action Number
87-0294-A

THANH VONG HOAI,
Plaintiff,

v.

THANH VAN VO, et al.,
Defendants.

ORDER

This matter came before the Court on defendants' motions to dismiss, and for reasons stated from the bench, it is hereby

ORDERED that the RICO and Security Act claims are DISMISSED and all remaining State claims are DISMISSED without prejudice.

/s/ Claude M. Hilton
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia

July 2, 1987

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 87-2135

THANH VONG HOAI,
Plaintiff-Appellant

v.

THANH VAN VO, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, District Judge.(CA-87-0294-A)

Argued: March 11, 1988 Decided: May 19,1988

Before HALL and WILKINS, Circuit Judges, and BRITT, United States District Judge for the Eastern District of North Carolina, sitting by designation.

Laurence A. Elgin (John D. Hemenway; D. Curtis Danielson on brief) for Appellant; Thomas A. Gentile; Alan H. Yamamoto; Michael Holm (Alan B. Croft; Hazel, Thomas, Fiske, Beckhorn & Hanes, P.C. on brief) for Appellees.

PER CURIAM:

Thanh Vong Hoai appeals from two orders of the district court dismissing his original com-

plaint and dismissing his civil RICO action.[1] Hoai charged that appellees conspired together to defraud him of his capital in two business ventures in violation of the civil RICO statute, 18 U.S.C. Section 1961 et seq.

On appeal, Hoai argues that the district court erred in dismissing his original complaint pursuant to Rule 8(e)[2] and in dismissing his amended complaint for lack of sufficient allegations to allege the existence of an enterprise and a pattern of activity under the RICO count. Upon review of the record, briefs and oral argument, we conclude that appellant's contentions lack merit and affirm for the reasons expressed by the district court from the bench.

AFFIRMED

---

[1] Hoai had originally alleged violations of the Securities and Exchange Act and several state causes of action which the district court also dismissed. However, Hoai does not argue these issues in his brief.

[2] The original complaint was 133 pages long, contained 24 separate counts and was supported by a 285-page affidavit.

JUDGMENT
UNITED STATES COURT OF APPEALS
for the
Fourth Cirduit

No. 87-2135

THANH VONG HOAI,
Plaintiff-Appellant

v.

THANH VAN VO, et al.,
Defendants-Appellees

APPEAL FROM the United States District Court for the Eastern District of Virginia,

THIS CAUSE came on to be heard on the record from the United States District Court for the astern District of Virginia,
and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby,

Affirmed.

/s/ John M. Graecen
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 87-2135

Thanh Vong Hoai,

Plaintiff-Appellant,

v.

Thanh Van Vo, et al,

Defendants-Appellees.

On Petition for Rehearing with Suggestion for Rehearing In Banc

---

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court of the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Hall, with concurrence of Judge Wilkins and Judge Britt, United States District Judge sitting by designation.

For the Court

/s/John M. Graecen
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

THANH VONG HOAI,
Plaintiff
v. CA No. 87-294-A

THANH VAN VO, et al.,
Defendants.

Alexandria, Virginia

Friday, May 8, 1987

The proceedings commenced at 11:00 am

BEFORE:

THE HONORABLE CLAUDE M. HILTON.

* * * Page 13 of Transcript * * *
(Jt. Appendix 791)

THE COURT: Well, that's right. You can't plead a conclusion, but y ou still don't have to plead 10 separate Rico conspiracies. What you've representing here, you don't have that.

MR. ELGIN: You have two separate schemes to take two separate business and you have a number--

THE COURT: By the same people.

MR. ELGIN: Yes, and you have a number of defendants.

THE COURT: Why isn't that one scheme as opposed to two?

MR. ELGIN: Well, I would say we would have to conduct more discovery to be certain of that. We allege that and we feel that's the case. We are uncomfortable in going out on that limb at [t]his point until further discovery is conducted.

This is what a number of these opposing cases to the Bach case point out, that the civil attorney can't be held to the same standard as the criminal attorney because he doesn't have the same tools to get the information out until he gets into discovery.

THE COURT: Well, I'll tell you I've glanced through this. I haven't read it in detail. It is 130-some pages and I've been through Rico complaints where I got a little aggravated after the 35th page. I think this thing has got to be redone and brought into focus as to what you're doing. You do have to set forth the fraud act, your Rico count with

particularity, but alleging 10 separate Rico conspiracies with all the repetition involved in that when in fact what you've got is one -- you say two separate conspiracies.

* * * HEARING OF JULY 2, 1987 * * *
J. Claude M. Hilton
(Jt. Appendix, p. 811)

THE COURT: This was one sale of two businesses, wasn't it? Wasn't this one transaction?

MR. ELGIN: No, not really. At first the plaintiff, our client, he didn't know of the connection between what he thought were two--He didn't realize that basically what was going on that he didn't know of the connection between what he thought were two--he didn't realize that basically what was going on that he didn't know about was that they were using the one offer to draw out his capital that they knew he had so he wouldn't have it to hold the other business. He didn't know that.

THE COURT: That may be. But it was one transaction for the purchase of two businesses? It was dis-

cussed at the same time.

MR. ELGIN: Not until very late in the game did that ever happen. In other words, when he set out to purchase them, he thought he was buying two different businesses from two different sets of people.

THE COURT: I understand. But it was one set-out to buy two businesses?

MR. ELGIN: No. He set out to buy one business, but then he was persuaded by two of the defendants to invest in the other business when he informed them of his situation, his available capital, his purchase of the gas station business and so forth. It was at this point that they conceived the scheme and then struck....

* * * End of Exerpt from July 2,1987* * *
(Joint Appendix p.812)

CERTIFICATE OF SERVICE

The undersigned certifies that this 12th day of October, 1988, he served three (3) copies of Petitioner Thanh Vong Hoai's "Petition For Writ of Certiorari to the United States Court of Appeals (Fourth Circuit)" and related Annexes I and II, also three (3) copies each, by U.S. Mail, first class, all postage pre-paid, to the following attorneys representing the parties in the court below in the within captioned matter:

Alan H. Yamamoto, Esq.
9677 Main St., Apt. B
Fairfax, Virginia 22031

Thomas A. Gentile, Esq.
P.O. Box 612
Arlington, Virginia 22216

Alan B. Croft,Esq.
P.O. Box 547
Fairfax, Virginia 22030

John D. Hemenway

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO. 88-765

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

APPENDIX II (Supplemental) PART A

Laurence A. Elgin *
John D. HEMENWAY
4816 Rodman St., N.W.
Washington, D.C. 20016

*Counsel of Record

CONTENTS

PARTIAL COPY OF THE SWORN AFFIDAVIT OF THE

PLAINTIFF/PETITIONER THANH VONG HOAI

MARCH 25, 1987

Note: Original text consists of 804 paragraphs

This copy includes the first 522 paragraphs and then, after a discontinuity, paragraphs 608-675

Thus it includes two-thirds of the document.

It recites Mr. Hoai's subjection to murder threats, extortion, threats of violence and mahem alleged against the Respondents-Appellees as they cooperate in their enterprise to extort, cheat, and seize Hoai's property by fraud.

This document accompanied the original RICO Complaint

(REMAINDER OF DOCUMENT FOUND IN ANNEX NUMBER III)

CONTENTS OF THIS VOLUME OF APPENDIX II

(Supplemental) APPENDIX II

PART A

Partial text of the Sworn Affidavit of PLAINTIFF/PETITIONER THANH VONG HOAI of March 25, 1987.

Paragraphs 1) through 78) pp 1-56

(Remainder of Affidavit in subsequent parts.)

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
(ALEXANDRIA DIVISION)

Civil Action Number
87-0294-A

THANH VONG HOAI,
927 N. Highland Street,
Arlington, Virginia,

Plaintiff,

v.

THANH VAN VO,
2242 Senseney Lane,
Falls Church, Virginia,
et al.,

Defendants.

==========

SWORN AFFIDAVIT OF PLAINTIFF THANH VONG HOA

Comes now Thanh Vong Hoai, who, being duly deposed and sworn does step forward to declare UNDER OATH the following:

1) I am Thanh Vong Hoai, a citizen of the United States by naturalization and a resident of Arlington, Virginia at 927 N.

Highland St. (22203).

2) I am the named Plaintiff in the above captioned RICO action which I have taken because, over the period of the last 15 months, the defendants have conspired to defraud, cheat, threaten my life and limb and that of my family and through these racketeering activities deprived me of my normal means of livelihood.

3) With the help of my several attorneys, I have read the RICO statutes and pertinent Virginia law and, paragraph by paragraph, these wise provisions of United States law have been explained to me and I clearly understand their applicability to my own problems.

4) Over a period of the last four months, but particularly the last two months, I have provided my attorneys with the materials needed to spell out in

detail the hour-by-hour involvement of all of the named defendants to this action.

5) My attorneys have produced four different drafts, in response to my suggestions, corrections and additions, so that to the best of my ability, this lengthy affidavit represents all of the pertinent facts to my own personal knowledge or to the best of my recollection and information, since some of my information came to me second-hand.

6) I have verified the RICO Complaint, after reading it carefully, and I offer this accompanying sworn affidavit keyed to the provisions in the RICO Complaint, so that anyone seeking to learn in greater detail the reasons for the accusations made in the Complaint will be able to learn from my affidavit exactly what happened to me and what I know of my

best knowledge and information, so as to understand why I turn to the Courts for protection in these racketeering matters that have so dismally affected the welfare and physically threatened me and my family with bodily harm and ostracism within our very own ethnic community.

7) In preparing this affidavit, I have tried consistently to name the relevant individuals as defendants, so that I am constantly aware that the charges I am making are serious charges not to be taken lightly and for which, as a responsible citizen of my community and new nation, I will personally be held accountable.

8) It is my hope that during the period I bring these matters to the attention of the court and the court's final decision, some action can be taken

by the court to protect my family from harm. It was on the very day that I was leaving to seek such protection from the courts that one of the chief defendants, Thanh Van Vo and his co-conspirators made serious and false charges against me in court that have brought about the necessity for me to file this Complaint under RICO statutes.

LIST OF INDIVIDUALS INVOLVED

9) Some of the major players who were important in the course of events that led to my being swindled and cheated out of my businesses, through lies, threats and false utterances and acts are listed below. I attempt merely to set out the facts in this affidavit--I have been guided by my attorneys in the preparation of my complaint, since that is a matter that requires legal training.

Nevertheless, as my verification indicates, I understand and agree with the naming of indicated parties as defendants. I now shall list some of the principal players:

10) Defendant THANH VAN VO (hereafter: "VO") lives at 2242 Senseney Lane, Falls Church. I thought he was my friend, but learned to regret trusting him. He promised to loan me money for the acquisition of a gas station, but used the leverage of that money to pressure me into giving him greater access to my business affairs than was wise, and then, through direct threats to kill me or inflict bodily harm on my family, extorted my gas station from me with the help of others noted in the Complaint.

11) Defendant THACH DUY NGUYEN (hereafter: "THACH") lives at 6123 Greeley

Boulevard, Springfield, Virginia, to my best knowledge. I first came to know him--falsely, as it turned out--as a "banker", who made promises of access to loan capital and who supported false statements advanced by others, such as those made by VO.

12) Defendant NGUYEN VAN MINH (hereafter: "MINH") resides with his wife NGUYEN THI BACH LUU (hereafter: "LUU") at 4105 North River Street, Arlington, Virginia. This man and wife team befriended me and my wife for the purpose, as it turned out, of swindling our family of all of the money we personally possessed or could raise through family borrowing, and in this process worked in tandem with such persons as THACH and VO to defraud us of money by tricking my wife and me into believing that they would

actually fulfil promises made to provide a lease for money we paid and thereby, with others, cheated us of our life savings and borrowing capacity to earn a living.

13) Various Vietnamese "toughs" known in the Vietnamese community as "Cowboys" were used, or threatened to be used by THACH and VO to intimidate me and others in the Vietnamese community during the period in which I was swindled and bilked of all of my cash and businesses first by trick, then by force. These "Cowboys" are employed, from time to time, by THACH and VO and others in their aspirations to become "strong" or a big force in the Vietnamese community "like the Italian Mafia".

14) Defendants MY-LINH SOLAND and MICHAEL S. ARIF are both attorneys in Virginia. Mrs. Soland promised to help me

get my gas station back and the food store I was running with my wife back from VO, THACH, MINH and LUU after they had been taken from me by those four acting sometimes together,sometimes separately. In fact, however, to my surprise and shock, Mrs. Soland was working for MINH and LUU during the entire time she promised to help me and she never did much that was truly helpful to me to reclaim my property from the racketeers who had seized it, illegally, by force and threat. MICHAEL S. ARIF was known to me as the attorney for THACH AND VO. He witnessed one attempt to coerce me to sign a $1.00 bill of sale of the gas station, even as VO and THACH threatened to kill me (in Vietnamese) which statements were translated by MY-LINH SOLAND. (I did appreciate her doing that.) But ARIF did

not seem to care and did nothing. Later, in August, he made an agreement with my attorney JOHN HEMENWAY to have his client VO abide by the decision of the Sun Oil Company as to possession of the station, but he did not keep that agreement and, like VO and THACH, assisted in my expulsion from my own property.

15) Attorneys DAVID C. ROSEMAN and MILLARD F. OTTMAN, JR. were hired by VO to sue me in Superior Court in the District of Columbia, which they did with the assistance of a large number of affidavits from some of the above characters and others which contained untruths, falsities and outright perjury, to my personal knowledge. I never could understand why American attorneys would cooperate in such a dishonest act. My attorneys have been defending me in this action which is

moving very slowly in the Superior Court of the District of Columbia, during which time I am deprived of my livelihood and reputation in Virginia, and subject to considerable denigration from certain members of the Vietnamese community and loss of face.

16) Defendant VO incorporated the name I had created and established for my gas station, some three months after he took possession of my station by force and trick. He made himself "President" of the corporation on July 17, 1986, to my best information, thereby trying to consolidate his gains made by racketeering and to steal from me my own property and means of livelihood. VO called this corporation by the name I had invented, SUNTECH SUNOCO, INC., and for that reason, I have asked my attorneys also to make that corporation a

defendant in this case.

17) Having identified the principal characters of this somewhat involved interwoven fabric of friendships established for the purpose of trickery and deceit with intent to defraud, I shall begin to explain how my property, reputation, and means of livelihood was stolen from me over a period of one and one-half years.

18) Defendants VO, THACH, MINH and LUU have received income derived directly and/or indirectly from a pattern of racketeering activity or from the collection of unlawful debt in violation of 18 U.S.C. 1962. For example, instances of this racketeering activity or collection of unlawful debt on the part of the four above-named defendants, out of more than two from which these defendants

received income, involved me and my property, as set out herein and others of which, as I understand it upon information and belief, involved others to their direct damage and resulted in proceeds to these defendants which they used in taking over my businesses and business interests belonging to me.

19) These 4 defendants used the income derived directly and/or indirectly from this pattern of racketeering activity or collection of unlawful debt to acquire, first, an interest in one business in interstate commerce belonging to me, which consisted of a gasoline station franchise and lease, both from the Sun Oil and Refining Company ("Sunoco"),located at 2305 Pennsylvania Avenue, S.E., Washington, D.C., by illegal and/or extortionate methods, using deceit and

threats of violence, and to acquire the interest of mine in yet another business, the Mekong Food Service Center, a Vietnamese specialty food and gift shop located in the Mekong Center Building at 3107 Wilson Boulevard, Arlington, Virginia, which latter business affects interstate commerce inasmuch as it is located on and draws business from a major highway artery leading into and out of the District of Columbia about 4 or 5 miles from the line between the District of Columbia and the state of Virginia and ordered its supplies and goods regularly from the District of Columbia, Maryland,Virginia and other states, all in violation of U.S.C. 1962 (a) as I understand that statute.

20) These same 4 defendants named in 18) above acquired this business and

business interest or control of the same from the plaintiff, respectively, through a pattern of racketeering activity and/or collection of unlawful debt as set out more fully below in violation of 18 U.S.C. 1962(b), as I understand that law. These same four so acquired the said business interests and/or control of the same from the defendant by a pattern of racketeering activity and/or unlawful debt and having used the proceeds from a pattern of racketeering activity in doing so, the four named defendants, VO,THACH, MINH, and LUU, conducted the affairs of these enterprises through a pattern of racketeering activity and/or collection of unlawful debt as set out more fully below.

21) In addition defendants VO, THACH, MINH, and LUU operated a defacto organization or enterprise which, in their

own words, aspired and aspires to be like the Italian and Italian-American mafia as an organized criminal entity and conducted its enterprises through a pattern of racketeering activity and/or collection of unlawful debt in violation of 18 U.S.C. 1962 (c) as set out below, used a pattern of racketeering activity and/or collection of unlawful debt to deceive and harm his co-defendants MINH and LUU, he did so in his aspirations to be the boss of all bosses of this incipient organized crime entity, and show who was the "capo" or head of the organization in order to get the others in his power and bend them to his will to do his bidding.

22) The four defendants VO,THACH, MINH,and LUU conspired, in violation of 18 U.S.C. 1962(d) to violate the provisions of one or more of the subsections (a),(b)

and (c) of 18 U.S.C. 1962 as set out herein, as I understand these laws.

23) The anonymous defendants, whom I could identify on sight, the Vietnamese "street muscle" gang, many of whose members live in, and many of whose activities are centered in Arlington, Virginia, also known as the "Cowboys", were employed by and associated with the aspiring organized criminal enterprise of the 4 defendants set out above as its "street muscle", since they aspired to have their association, as they informed the plaintiff,become a Vietnamese version of the Mafia, the activities of which affected interstate commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt, mainly the

business enterprises and interests of the plaintiff aforesaid, all in violation of 18 U.S.C. 1962 (c), as I understand it.

DEFENDANT SOLAND

24) The defendants MINH and LUU did commit a further violation of the aforesaid section of the laws to further the illegal purposes of the group in that they did conspire further in this regard to deprive me personally of counsel and prevent me, therefore, from petitioning for the redress of my grievances in furtherance of their racketeering efforts as set out herein by continuing to retain and use the services of the woman who was my attorney, from sometime in June of 1986, when that attorney, defendant MY-LINH SOLAND ("SOLAND"), was hired by me, until sometime in August even while they were conspiring and concerting together

with the other defendants as set out herein and acting in the pattern of racketeering activity set out herein to deprive me of all my liquid assets needed for businesses.

25) At the time that the defendant SOLAND did undertake to represent me in June of 1986 she did not reveal to me that she was representing the defendants MINH and LUU who were part of the enterprise engaged in the pattern of racketeering activity or collection of unlawful debt against me.

26) The defendant SOLAND did concert and conspire together with the aforesaid defendants MINH and LUU to injure my interests by assisting the defendants in their extortion and racketeering activities against me when she was their agent at the same time she was holding

herself out to me to be my personal attorney, and that she did so in breach of trust and/or fiduciary duty, by undisclosed double agency, and by fraud and deceit as to her status as an attorney admitted to practice before the bar, all in violation of law and in violation of the ethics of attorneys.

27) The defendant SOLAND did so in order to, and/or with the effect of, depriving me of a timely right to effective counsel in order to be able to petition for the redress of my grievances under the First Amendment to the United States Constitution.

28) All of the defendants named herein did conspire together, each with the other, in different combinations at different times,as set out more fully below,in violation of these subsections

(a), (b) and (c) of 18 U.S.C. 1962, which conspiracies violated 18 U.S.C. 1962 (d) as understood by me.

SPECIFIC RACKETEERING ACTIVITY

29) The 4 defendants VO, THACH, MINH and LUU committed a number of acts, and threatened even more acts of robbery and/or extortion against me and threatened these and other such acts all constituting racketeering activity as defined in 18 U.S.C. 892 and/or 894 as incorporated by reference in 18 U.S.C. 1961,and similarly engaged in interference with commerce, robbery and/or extortion in violation of 18 U.S.C. 1951 as incorporated also in Section 1961. They also defrauded me and committed fraud upon me using mail fraud as instrumental in such fraud or as

incidental thereto in violation of 18 U.S.C. 1341 and/or telephone transmission in violation of 18 U.S.C. 1343.

30) The anonymous defendants DO,RO,LO and KO ("cowboys") engaged in these same activities as they were employed by the aforesaid defendants, either or some of them, or as associates of the aforesaid defendants in violation of 18 U.S.C. 1962 as aforesaid and within the definitions of 18 U.S.C.1961 aforesaid and 18 U.S.C. 2, as I understand these statutes.

31) The defendant SOLAND was employed and associated with the defendants MINH and LUU and/or THACH in certain of these activities as set out above and more specifically below in violation of 18 U.S.C.1962 as aforesaid and within the definitions of 18 U.S.C. 1961 aforesaid and 18 U.S.C.2.

32) All these defendants did do these things as set out more fully below, to wit:

33) The defendants, and each of them, at varying times and in various ways, as set out more fully below, did conspire and concert and act to take from me, the plaintiff, by extortion consisting of fraud, deception and threats of violence, sometimes using the telephone and/or mails and/or other methods of interstate communication and by interstate travel by motor vehicle, the two businesses that belonged to me as aforesaid, one of which is in interstate commerce in the District of Columbia and the other of which, in Arlington, Virginia, near the District of Columbia, affects interstate commerce, as follows:

FRAUD: FACTS SUPPORTING AND ESTABLISHING

SAME

(a) Relevant Business History and Background of THANH VONG HOAI

34)I want to repeat and incorporate herein by reference the allegations of paragraphs 1) through 33) above.

35)I have much experience with gas stations, auto repair, and related businesses, to wit:

A) In June, 1975, upon first coming to the United States as a refugee from his native Vietnam,I worked as a service station attendant at a Phillips Petroleum Company "Phillips 66" station in Strout, Oklahoma from July, 1975 until May, 1976, at which time my family moved to Northern Virginia.

B) In 1976, in the summer,I found work as the manager of a Mobil service station in Merrifield, Virginia for

approximately one year and a half, starting with the management of a single station and rising to management responsibility over four Mobil stations in Fairfax County by the end of the year and a half.

C) In 1978 I began work for the defendant SUN OIL AND REFINING COMPANY ("SUNOCO"), in Northern Virginia as manager of a single station in Falls Church, Virginia; within 2 or 3 months I was promoted to area manager with supervisory responsibility for five stations in Northern Virginia and nearby Maryland.

D) In 1979 I began work for myself as an independent Texaco dealer, subleasing a station.

E) In 1980 I returned to Sunoco as a dealer, owning a dealership in a station

in Greenbelt, Maryland, which he continued until 1982.

F) Commencing in 1982 I ran an auto repair, auto body shop and car wash in Washington, D.C., as the President of a corporation owned by his mother-in-law, the Capitol Hill Car Wash, Incorporated. He ran the business until 1985, drawing out a salary and expenses in a business that was a "break even" proposition.

G) In 1983, while running the Capitol Hill Car Wash, I started up another business, also owned by his mother-in-law, at the same neighborhood, for the conversion of "stock" vans into custom recreational vehicles. After almost two years, I moved the site of this "van conversion" business to Springfield, Virginia, where I continued to run it for 4 or 5 months thereafter, at which time,

finding it to be non-profitable, I and my mother-in-law closed this business in January of 1986.

H) In the meantime, in 1985, the business of the car wash having dropped off in 1984 and 1985, I and my mother-in-law closed the Capitol Hill Car Wash business.

I) In January and February of 1986, I started a new search for new business and work opportunities, which had begun as the decisions to close down the car wash and van conversion businesses were being made.

(b) The Sunoco Station at 2305 Pennsylvania Ave., S.E., Wash., D.C.

36) In February of 1986, while looking for new business opportunities, I saw that the Sunoco station at 2305 Pennsylvania Avenue, S.E., in Washington,

D.C., had a "For Lease" sign on it with a telephone number to call in order to inquire into the lease and franchise. That telephone number was the number of Mr. Ernie Peele, the then Sunoco area manager, 737-7622. Upon telephoning Mr. Peele, I soon learned that the station was owned by Sunoco and that it was closed after termination of the previous franchisee and that Sunoco was looking for a lessee-franchisee to operate it.

37) When I talked it over with Mr. Ernie Peele, the Sunoco regional manager for retail distribution in this region, at the aforesaid number, Mr. Peele responded positively to plaintiff's inquiry into the possibility of taking over the lease and franchise for the station although Sunoco had between 16 and 18 applications, for which a review had to be conducted to see

who was the most qualified.

38) From February 14 until two or three weeks later, at the very end of February or the beginning of March or thereabouts of 1986, I kept in close touch with Mr. Peele of Sunoco weekly by telephone. During this period Mr. Peele informed me that the location was a very important one for the Sunoco company because of the high volume of gas that could be generated from the heavy traffic at the location and the need for great responsibility because of its location.

39) About two or three weeks after February 14 or 16 or thereabouts, 1986, Mr. Peele called me to tell me that because of the number of applications and the qualifications of the applicants, he was having to do a lot of work to review all the applications and select the best

qualified applicant.

40) At this time Mr. Peele told me frankly over the telephone that in order to take over and operate the lease and franchise, I would have to have ready access to available capital in the amount of seventy-one thousand dollars ($71,000.), broken out as follows, as written down by plaintiff at that time:

1. For purchase of gasoline and diesel fuel	$20,000.
2. For purchase of Tires, Batteries & Auto accessories (TBA)	10,000.
3. For equipment	15,000.
4. For operating capital	15,000.
5. For franchise deposit	5,000.
6. For first month's rent in advance	2,000.
7. For insurance	3,000.
8. For utilities, etc.	1,000.
TOTAL	71,000.

41) To Mr. Peel's words, I replied that I have capital of $35,000. To this Mr. Peele replied that seventy thousand

dollars ($70,000.) would be enough capital and that if I could come up with another thirty-five thousand dollars in capital that would be enough. I told Mr. Peel that I thought I could find how I could come up with another thirty-five thousand dollars ($35,000.) within a week or so.

42) During this conversation also Mr. Peele informed me that the Sunoco company would be making a check on me and my credit and my prior standing during my service with the company.

43) At the time I had access to, and the availability of, thirty-five thousand dollars ($35,000.) in capital for investment in reasonable business opportunities through commitments from my wife's family. Therefore I needed to borrow or otherwise obtain an additional thirty-five thousand dollars ($35,000.) in

order to meet the requirement which Mr. Peele had specified on behalf of Sunoco.

(c) The Involvement of Defendant Vo

44) Immediately after this conversation in early March in 1986, I had several discussions with the defendant VO concerning the latter's helping him acquire and operate the gas station lease and franchise with the necessary funds as specified by Sunoco.

45) Earlier, I had met the defendant VO and had become involved with him so that he was a natural person to turn to under the circumstances. Through a series of fraudulent representations with a relevant ulterior motive, in this way:we met through my mother-in-law, socially, in 1979 in Northern Virginia at the House of defendant VO's uncle-in-law, where defendant VO and his wife lived at that

time. We talked on the telephone or met each other once or twice a year on the street after that until 1985.

46) Throughout this period the defendant VO claimed to me that he, VO, operated and owned a large construction firm in the Washington, D.C. area. Defendant VO claimed that this was a large construction firm which employed over 80 people.

47) This claim to own and operate a large construction firm employing over 80 people was and is a deceit and fraud practiced upon me and upon others, to my best belief. Defendant VO did not have such business then and has never had such a business and does not have such a business now. He well knew that he had no such firm but so represented facts to me, in particular, in order to make plausible

a further representation concerning the availability of funds that such a business, of his would generate, as set out below.

48) In November of 1985, while I was working at the van conversion business aforesaid, I was approached by the defendant VO who again told me about his very large construction company that he, VO, owned, saying that any time that I needed a big office or building he, VO, could build it for me. I told him I did not need that.

49) I did tell him that my van conversion business was not making a profit and that "we will probably have to close it down." (translation into English). Defendant VO said at that time that he had lots of money from his construction business, that he employed

over 80 people in it and that his construction business had over $500,000. worth of construction equipment and that if I ever "needed anything, let me know and I will try to do for you." (translation into English).

50) This again was fraud and deceit, known by the defendant VO to be a false representations when he made them and made in order to induce me, as an intended victim, to seek financial assistance from the defendant VO in order that the defendant VO might then, with the assistance of the other defendants named herein, collect on any such obligation, deceitful and fraudulent though it might be, by a pattern of racketeering activity, which is what subsequently happened as set out more fully below.

51) In February of 1986, on about the

15th or 16th, defendant VO telephoned me at home, indicating that he, VO, had learned that I had decided to close down the van conversion business. He expressed surprise at that despite having been told earlier by me that is what I intended to do. At this time, in light of defendant VO's offer back in November, I asked defendant VO to lend him for personal use while I was between businesses, the amount of two thousand dollars ($2,000.) to which defendant VO replied: "No problem, I'll give it to you right away; I stop at your home tonight, I'll give to you." (Translation into English.)

52) That night I waited all night at home for defendant VO but the defendant VO never showed up.

53) Based upon information and belief and the subsequent behavior of the

defendant VO and the other defendants, I am now certain that the defendant VO did not have two thousand dollars ($2,000.) to give me as a personal loan at that time, or, in the alternative, if the defendant VO had two thousand dollars ($2,000.) at that time, the defendant VO had no intention of giving it to me either as a personal loan at that time or right away as he stated he would. Either way, the same was a fraud and a deceptive statement designed to cause me to reply upon the promised immediate personal loan to his detriment in order that I might thus be made more vulnerable to the pattern of racketeering activity which ensued in which the defendants were to deprive me of my newly-acquired businesses by a pattern of racketeering activity.

54) During this same conversation o

the telephone between me and the defendant VO on or about February 15th or 16th of 1986, defendant VO wanted me to tell him of what business I intended to go into next, to which I replied that I was not yet able to say but that he was going to take his time and be careful before selecting a new business. In response to this the defendant VO repeated his assertions of prior conversations that he owned a large construction company and had much money as a result of the business of that company and that I should come to him if I ever needed help when I decided to undertake a new business.

55) After not showing up at plaintiff's house to bring the two thousand dollars ($2,000.) as promised on the night of the phone conversation with me on or about February 15th or 16th, th

defendant VO did not contact or communicate with me for twelve days or so thereafter, at the end of which time the defendant VO again telephoned me. This was on or about the 28th of February or 1st of March, 1986. When defendant VO telephoned me on this occasion he affected a genial manner and inquired as to how the search for a new business was going. I responded directly to this inquiry by asking of the defendant VO where the two thousand dollar loan that defendant VO had promised was and what had happened when defendant VO had promised to fulfill his pledge of bringing the money over on the night of our previous conversation, stating that if defendant VO could not keep his word and make the loan of two thousand dollars ($2,000.) as promised, I would simply go to someone else and obtain

the needed loan. To this defendant VO replied that, no, he would make the loan as promised and he would bring the money over that very night.

56) The defendant VO, however, did not bring over the promised loan of two thousand dollars ($2,000.) that night as he had committed he would.

57) Again, this promise to me over the telephone was a fraud and a deceit practiced upon me and my family. Alternatively, either the defendant V0 had no such money, in which case he obtained it from one of the other defendants for use in furthering the scheme of fraud and extortion in which he was engaged to take over the business or businesses that my wife and I intended to start up, as defendant VO well knew I intended to do, and it was money obtained from a pattern

of racketeering activity or, in the alternative, he had the money, derived from a pattern of racketeering activity, and he was deliberately stalling me in order to "set me up" for the illegal fraud and extortion scheme by weakening me financially and gathering information on the actual resources available to me in liquid form for investment.

58) Two or three days later, in the first week of March, the defendant VO did come to my Arlington home and brought one thousand and five hundred dollars ($1,500.) in cash and gave the money to me in response to my earlier request for a personal loan of two thousand dollars ($2,000.) with the understanding that it was a personal loan for an indefinite period to be repaid after I had started up my new business and was drawing income

from such new business.

59) It was at this time, when plaintiff received the one thousand and five hundred ($1,500.) loan in cash from defendant VO that I had just learned from Ernie Peele, the Sunoco area manager, the amount of start-up capital that it would be necessary for me to obtain to begin the operation of the gas station lease and franchise on 2305 Pennsylvania Avenue, S.E. in the District of Columbia and it was at this time that I began to talk to defendant VO about the additional funds that he would need to obtain and operate the gas station lease and franchise in light of the earlier offers of help from defendant VO.

60) On this occasion I recall talking to defendant VO of my pressing need for total capital of seventy-one thousand

dollars ($71,000.) according to Ernie Peele and of my available capital of approximately thirty-five thousand dollars ($35,000.) and, therefore, of my need for an additional thirty-five thousand dollars ($35,000.) or so in order to obtain and operate the Sunoco lease and franchise.

61) Defendant VO said to me at this time in response to this statement by me of my need for the additional thirty-five thousand dollars ($35,000.) that such a loan would be "no problem; call Ernie Peele and tell him you have the money." (Translating from Vietnamese.)

62) Defendant VO claimed to me several times during this period that his construction business, RV Construction, generated this kind of money, one hundred thousand dollars $100,000., and he needed to do something with the money. Defendant

VO at this time pressed me to accept a line of credit for one hundred thousand dollars ($100,000.) which he, VO, would provide. But I stated to defendant VO that I only wanted the money through a line of credit from VO of what I needed according to the Sunoco representative, Ernie Peele, namely, thirty-five thousand dollars ($35,000.).

63) Naturally, I then asked defendant VO about interest and monthly payments, to which defendant VO replied that it was a loan "does a friend help friend," (translating from Vietnamese) and that he would require no payment at all in the first year while I was getting the gas station business going. If, defendant VO said, after the first year he, VO, did not need the money, then I could just pay him the interest at 10 or 12 percent.

64) All of these representations by defendant VO during this conversation referred to in early March, when he delivered the one thousand and five hundred dollars ($1,500.) in cash to loan to me, were fraud and deceits practiced by defendant VO upon me. Defendant VO had no construction company of any such size that generated any such amount of cash. Defendant VO had no ability to furnish any such line of credit. Defendant VO knew these were false representations and he knew that he was not making a loan to help a friend with any intention of forebearing on the collection of it for one year and just collecting interest thereafter. Defendant knew full well that his intent was to "set me up" in order to make me vulnerable to subsequent fraud and extortion in order that defendant VO and

the other defendants could take over the business or businesses that I had acquired and/or started up and the assets that Vo knew I would put into them.

65) I did rely upon these fraudulent and deceitful representations to his subsequent harm and detriment, which defendant VO intended me to do.

66) With regard to the gas station business in particular, as can be seen from statements above, I had extensive experience, qualifications and capabilities that made me suitable to obtain such a lease and franchise from a major oil company and operate such a station. Defendant VO had none and, as subsequent events were to show, had very little ability to operate such a lease and franchise even when he acquired it by fraud and extortion. Sunoco violated its

procedures and practices in accepting defendant VO and his lack of qualifications when it decided to cooperate with Vo in the takeover of plaintiff's business.

67) Nonetheless, on the occasion of this visit by defendant VO to my home in Arlington, defendant VO and I agreed orally upon a line of credit in the amount of thirty-five thousand dollars ($35,000.) to be extended by defendant VO to me under the following conditions: A) Interest would be paid on moneys extended under the line of credit at the rate of twelve per cent (12%); B) no payment of interest or principle would be paid until after the station had operated for one full year in order that it be firmly established and prospering, and C) after one full year, the interest and principle would be paid

back at a reasonable rate according to the revenues of the gas station business.

68) These negotiations aforesaid went on from February of 1986 until this time early in March and there was further discussion between me and defendant VO up until March 21, 1986, by which time both of us reached a seemingly satisfactory agreement. The negotiations took place in Arlington County, Virginia, at my Arlington home. Some negotiations took place on the telephone between the homes of defendant Vo and my home in Arlington, all as set out above.

69) During these negotiations between plaintiff HOAI and defendant VO, from February of 1986 until March 21, 1986, when the agreement was being worked out by the two parties, believed to be friends,I had introduced defendant VO to the

regional manager for Sunoco, Mr. Ernie Peele. During his conversations with both me and the defendant Vo, Mr. Peele, as the regional manager for Sunoco, stated in front of both that the lease from Sunoco to me as licensee for the gas station franchise at 2305 Pennsylvania Avenue, S.E., Washington, D.C., could not be assigned or sold without the prior written consent in writing of the Sunoco company and that the same was true for the Sunoco franchise that went along with it, as the two were interconnected.

70) On March 21, 1986, in the morning, defendant Vo, I and Ernie Peele, the Sunoco regional manager, met together at the Howard Johnson Motor Hotel on Route 1 in Alexandria, Virginia. At this meeting defendant VO confirmed to Mr. Ernie Peele, as regional manager for

Sunoco, that he, VO, was the owner and operator of a substantial construction company and that he, VO, was making a personal loan to me, his friend, in the form of a line of credit in the amount of thirty-five thousand dollars ($35,000) as set out above under the conditions set out above and no others.

71) At the meeting aforesaid, on March 21, 1986, in my presence, the Sunoco regional manager, Mr. Ernie Peele, closely questioned the defendant VO regarding the possibility of hidden interests that defendant VO or others might have in the Sunoco lease and franchise, if it were granted to me, such as a hidden partnership interest. Defendant VO at this time explicitly denied to Mr. Ernie Peele, as the regional manager for Sunoco, that there was any such hidden interest on

his, VO's part, or anyone affiliated with him.

72) These representations by the defendant VO to Ernie Peele, the area manager of the defendant SUN OIL AND REFINING COMPANY ("Sunoco") were fraudulent and deceitful and intended by defendant VO to induce me and Ernie Peele on behalf of defendant Sunoco to rely upon them to their detriment and harm in order to "set up" me and Sunoco by inducing Sunoco to grant the lease and franchise for the aforesaid service station to me in order that defendant VO and the other defendants might take the business from me by fraud and extortion as they subsequently did to the harm of both me and of the lessor SUNOCO up to the point in time when defendant Sunoco, despite its pledges to me, decided to join Vo and the

other defendants and aid and abet them in defrauding me and extorting and facilitate their using the proceeds of the fraud and extortion to take over my business and use the proceeds of the said fraud and extortion to affect interstate commerce.

73) At this meeting also Ernie Peele, on behalf of defendant Sunoco specifically asked defendant VO whether he was the partner of mine in the gas station enterprise or not, whether he had any ownership or hidden interest in the station lease and franchise or any agreement that he would have such an interest or whether he was just lending the money to his friend, Thanh Vong Hoai. Defendant VO replied that he had no partnership, ownership or hidden interest and expected none; he was only loaning money to a friend, and I sincerely

believed this at the time.

74) After this questioning of the defendant VO at the meeting on March 21 at the Howard Johnson Motor Hotel on Route 1 in Alexandria, Virginia as set out above, the Sunoco regional manager, Mr. Ernie Peele, indicated that I would be accepted by Sunoco as a lessee and franchisee, whereupon defendant VO excused himself for 2 and 1/2 hours and returned after that time with two certified bank checks, one for five thousand dollars ($5,000.) and the other for two thousand dollars ($2,000.) for the initial deposit on fuel, tires, batteries and accessories under the franchise and lease agreement and for the first month's (April's) rent under the terms of the lease and franchise agreement. Defendant VO handed these two checks to me personally and I gave them to

Mr. Ernie Peele. Mr. Peele then gave a receipt for the payment of these two amounts to me as the new franchisee.

75) In this meeting between defendant VO and plaintiff HOAI and the Sunoco regional manager, Mr. Ernie Peele, the defendant VO represented to both parties that he was lending the aforesaid amount of thirty-five thousand dollars ($35,000.) to the plaintiff HOAI under the terms of the oral loan agreement as set out above, namely, 12 per cent (12%) interest with no repayment of principle or interest during the first "start-up" year of the operation of the gas station by me, HOAI and a reasonable schedule for repayment thereafter.

76) This representation was in fact a deception and a fraud. The defendant VO never had any intention of lending

thirty-five thousand dollars ($35,000.) under the terms and conditions agreed upon, then or thereafter, and only made these representations and promises to induce me, the franchisee, to rely upon him, the defendant VO for the money in order that he, the defendant VO, might take the gas station business from me, the franchisee, by fraud and extortion which defendant VO then did do by a pattern of racketeering activity in concert with the other defendants which is set out more fully below.

77) Defendant VO never intended to produce any more of the thirty-five thousand dollar ($35,000.) line of credit than the seven thousand dollars ($7,000.) produced on that day and never did so, though he falsely represented subsequently that money that he took out of the cash

flow of the service station itself, once he had seized control of the books, and money he provided for other purposes, was money he was investing in the service station business and caused others of the defendants to do so as well, acting on his behalf as his agents, as set out more fully below.

78) I hereby assert on best information and belief that the defendant VO drew the aforesaid five thousand dollar ($5,000.) check and two thousand dollar ($2,000.) check on funds that he obtained through racketeering and/or criminal activity or, in the alternative, that he obtained the same from one of the other defendants, a co-conspirator, who obtained the funds through such activity.

(d) The Involvement of Defendants Minh

NO. 88-7654

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

APPENDIX II (Supplemental) PART B

Laurence A. Elgin *
John D. HEMENWAY
4816 Rodman St., N.W.
Washington, D.C. 20016

*Counsel of Record

CONTENTS OF THIS VOLUME OF APPENDIX II

(Supplemental) APPENDIX II

PART B

Partial text of the Sworn Affidavit of the PLAINTIFF/PETITIONER THANH VONG HOAI of March 25, 1987.

Paragraphs 79) through 203) pp 57-140

(Remainder of Affidavit in previous or subsequent parts.)

and Luu: The Mekong Center Food Business

79) The defendants MINH and LUU are man and wife and their involvement in these matters and their participation in the fraud and extortion practiced against me came about as follows:

80) When my wife and I came to Northern Virginia in 1976 we had been married a short time, having married in Oklahoma. We became acquainted with the defendants MINH and LUU who ran a business known as the Mekong Center, a specialty oriental food business catering to the Vietnamese, Chinese, Thai and other oriental ethnic communities of Arlington County, Virginia and nearby areas. This business was located in the building at 3107 Wilson Boulevard, Arlington County, Virginia.

81) I shopped with my wife, like many members of these local oriental communities, shopped from time to time in this food store run by defendants MINH and LUU. Both my wife and I became acquainted with both of these defendants as customers in their store.

82) At this time the Mekong Center appeared to be a popular store and restaurant with the local oriental communities and, as far as I knew Minh was a prosperous local business.

83) In The Republic of South Vietnam, like many people, I had known of the defendant MINH and knew that he had a reputation for fraudulent schemes and involvement in the black market but I felt that all such things had been left behind when the members of the population there came to the United States and that all

were starting a new life here.

84) In 1979 I started with my own gas station as a Texaco dealer,and that year my wife and I were doing well.

85) Seeing that my wife and I and (by this time) our children were doing well, in 1979 the defendants MINH and LUU invited plaintiff and his wife to their home. We became social friends, introducing them into our social circle.

86) My wife and I and defendants MINH and LUU remained social friends on this basis, with no discussion of business dealings together, until 1983.

87) One day in the summer of 1982 or 1983, as I entered the Mekong Center Food Store building on my way to the restaurant on the second floor which the defendants MINH and LUU had recently opened at that time as an adjunct of their food store

business, the defendants MINH and LUU stopped me as I passed by the food store on the first floor and told me that they had a problem with the purchase of a piece of land at the corner of Lee Highway and Route 7 in Falls Church, Virginia, in that they had put down a down payment of thirty-five thousand dollars ($35,000.) and settlement was to be that very day but they, defendant MINH said, did not have the balance of the money to complete the purchase of the land. The total purchase price of the land, as stated by defendant MINH on that occasion, as I clearly now recall, was approximately two hundred and seventy-five thousand dollars ($275,000.).

88) At this time, defendant MINH then asked the plaintiff to immediately lend him fifty thousand dollars ($50,000.) which he said was what he needed to

complete the purchase of the aforesaid land at the settlement for the purchase of the land scheduled for that day and a bank was willing to finance the rest (Either First Virginia or First American.)

89) To this request I had to reply that I did not have such an amount of money to lend the defendant MINH but that I would help the defendant MINH in this way: If the defendant MINH knew a person who had such an amount of money that he could lend the defendant MINH, then I said that I would pledge my car wash equipment, lease and business to be security for such a loan. The defendant MINH said he knew such a person, one Duong. Immediately, defendant MINH, without looking up any telephone number, picked up the telephone in the food market and dialed a number with me looking on. I

heard the phone answered "Mr. Duong". Defendant MINH then told the person on the other end of the line that he had Mr. HOAI with him who would put up his car wash as security so that Duong could lend defendants MINH and LUU "that $50,000."

90) Then defendant MINH handed the telephone to me, and after an exchange of pleasantries with the person on the other end,I comfirmed what defendant MINH had said was true and that I was prepared to put up my car wash as security if the person om the other end of the line would loan the money because he wanted to help Mr. MINH.. The person who had answered as Mr. Duong than said he knew of me and that he knew that I was a person worthy of trust and that it would not be necessary for me to put up my car wash to secure the loan but that he would lend defendants

MINH and LUU the money because of my evident willingness to trust them enough to pledge my car wash as security.

91) Immediately then defendant MINH got in his car and went to get the money from Mr. Duong.

92) The next day, defendant MINH called plaintiff at his car wash on the telephone and told me that the deal for the aforesaid land had been settled and closed. He then invited me and my wife to have dinner that evening with defendants MINH and LUU to celebrate, which we did.

93) I have learned on information and belief, based on knowledge subsequently acquired, that the defendants MINH and LUU used this land to perpetrate acts and threats involving extortion in violation of 18 U.S.C. 1961 (A), acts indictable

under 18 U.S.C. 1343 relating to wire fraud, acts constituting securities fraud and thereby violating Section 10 of the Securities and Exchange Act of 1934 (15 U.S.C. 78j) and Rule 10-b (5) of the United States Securities and Exchange Commission promulgated thereunder, as well as in violation of Section 27 of the latter act (15 U.S.C. 78aa.), which fraud, though it did not harm me directly at the time, was part of a pattern of racketeering activity which produced income for defendants MINH and LUU which ultimately was used to take from me my own businesses as set out herein, viz:

94) Defendants MINH and LUU represented to the Washington Metropolitan Area ethnic Vietnamese community that they were going to build on this land at Lee Highway and Route 7 which I had offered to

go security for the purchase of, a building called the "Mekong International Center" to be built on this land. To that end, starting about three weeks after the dinner of celebration of the closing on the settlement of the land described above, these defendants had made a series of architectural plans, at first for a building three stories on the site, then for a building of five stories and finally for a building of ten stories. They represented to the Washington Metropolitan area ethnic Vietnamese community in newspaper advertisements in the Vietnamese Washington Post (English translation), an advertiser supported weekly newspaper that circulates and is circulated by its publisher in interstate commerce in Virginia, the District of Columbia and Maryland, and asked for investments in

this purported building project in the form of purchases of opportunities to own a shop, office or other business in the proposed building. These advertisements requesting such investments were for investments in leases in the proposed new building, the Mekong International Center, in amounts on the order of thirty, forty and fifty thousand dollars ($30,000.; $40,000.; $50,000.) for which the investor was to receive a lease entitling him to space in the building. The ads gave work and home phone numbers for defendants MINH and LUU.

95) Many members of the Washington Metropolitan area ethnic Vietnamese community did call defendants MINH and LUU in response to these ads in interstate commerce and ask either MINH or LUU about investment in the proposed new building.

I have this on information and belief and also, in many instances because I was at the specialty food store owned and operated by these defendants on Wilson Boulevard when the people called in response to the ads. Indeed, I sometimes answered the phone myself when they called.

96) When such investors called MINH or LUU would find out from them such facts as how much money they had to invest, how many square feet the potential investor wanted in the building that these defendants were representing they were going to build and so forth, telling the investors who called that they would have to put up a substantial deposit to assure themselves of priority and a good location in the purported new structure and that they would have to meet MINH or LUU at

MINH and LUU's home and make their deposit and get a receipt. All this was done on the phone and the potential investor did not realize he'd be defrauded.

97) In fact all of this was a fraud. Defendants MINH and LUU never had any intention of actually building a building and never did so. In fact they never even broke ground. They put up a sign and advertised that they were going to build, including representations in local newspapers, but sold the land in 1984 as still undeveloped to others for a profit of approximately three hundred and sixty-five thousand dollars ($365,000.).

98) Although, under compulsion and threats of legal action MINH and LUU gave some of this profit to repay some of the defrauded investors, many of the investors were never repaid their deposits which

they had put up on their supposed investment and many received only part of their money back.

99) A special class of investor in this fraudulent investment scheme using wire fraud was the "immigrant investor," of whom there were a number. These were members of the local ethnic Vietnamese community to whom these defendants applied a special form of extortion. Defendants MINH and LUU would ascertain that these investors had a hidden amount of money which they did not report to state and/or federal welfare authorities to whom they applied for and from whom they were receiving payments to which they claimed entitlement because of poverty. Defendants MINH and LUU extorted their deposit money from these investors and refused to return it by threatening these

investors that they, MINH and LUU, would turn them into the authorities and have them prosecuted for welfare fraud if the dared to try and get their money back. There were a number of such investors in this category.

100) Other investors in the scheme were extorted of and defrauded of their deposits by other threats.

101) About three months after the dinner of celebration alluded to above, the day after I had offered my car wash equipment, business and lease as security to Mr. Duong, the defendants MINH and LUU asked me to invest in this project by buying a lease for a movie "entertainment center," in the proposed building. Defendants suggested that I invest "as much as I could." (translation into English.) They offered to go to the bank

and borrow money for me which they in turn would lend to me for any additional funds I needed. But I declined. This scheme was a fraud and deceit designed to get me into their power financially for purposes of extortion and fraud as later events showed. But on this occasion I had avoided the trap.

102) When I decided to refuse to invest in this fraudulent project aforesaid by refusing to invest in a movie and entertainment center lease, defendants MINH and LUU "cut" off me and my wife socially by not contacting us any more and ceasing to invite us to their home. In response I and my wife ceased shopping and eating at the Mekong Center.

103) So I did not see these defendants thereafter for about a year, until December of 1984.

104) In December of 1984 I decided one day to eat lunch in the second floor restaurant of the Mekong Center, the establishment on Wilson Boulevard. I had already heard at this time that defendants MINH and LUU no longer ran the restaurant part of the Mekong Center but rented it out to someone else.

105) When I had just entered the ground floor of the Mekong Center on this occasion I was again hailed by the defendants MINH and LUU who were there in the ground floor specialty food shop. They hailed me with overly effusive greetings, expressing their pleasure at seeing me after not seeing me for so long. They told me that they were again in desperate trouble. That they had again purchased a piece of land, this time a parcel of 93.7 acres or thereabouts on

Braddock Road in Fairfax County, Virginia. This time, as they related it, they had paid down 3 or 4 thousand on the land, which had a purchase price of about five hundred thousand dollars ($500,000.) and they had a closing at which they gave some notes with stiff penalties if not paid on time. A note, or portion of a note, they informed me, for one hundred or one hundred and twenty thousand dollars ($100,000. or $120,000.) had come due and they had been unable to pay it. Now, they said the seller of the land would not take any money even if they had it and had sued them to get the land back and get from them as well an amount of five hundred thousand dollars ($500,000.). They explained to me that they had been to many lawyers and banks and no one had been able to help them out.

106) I agreed to help them out, I took them to a lawyer I knew, James Fourqurean, Esquire, who, on my personal recommendation, agreed to represent them. Then I worked along with Mr. Fourqurean for over a month helping with their problem and it was worked out eventually by Mr. Fourqurean, with my assistance. The land was saved and the suit against defendants MINH and LUU was settled. Recently it has been reported in papers that these defendants have sold this parcel of land to George Mason University for 1.3 million dollars.

107) At the time that these defendants asked for my help in this matter, in December, 1984, the defendants MINH and LUU promised to pay me if I could assist them in this matter. Before the settlement of their problems with this

land was reached, defendants promised to give me the land on which I could build a house of any reasonable size I wanted. This proved a fraud and a deception; these defendants had no intention of fulfilling such a promise when they made it and I had relied upon their promise and completed my work for them to my subsequent harm. After the problems were resolved, the defendants MINH and LUU shocked me by saying that I had done nothing to help them and defendant MINH asserted to me that he, MINH had done everything and that I had done nothing.

108) This ingratitude angered my wife and because of their ingratitude she and I agreed that we would again cease to have anything to do with defendants MINH and LUU.

109) Although I did see defendants

MINH and LUU a few times from early 1985 until 1986, I did not talk to them at any length except in November of 1985 when defendant MINH called me on the telephone to tell plaintiff that defendants MINH and LUU had a buyer for the land on Braddock Road at a price of one million, one hundred and eighteen thousand dollars. ($1,118,000.) On the occasion of this phone call the defendant MINH assured me that he and defendant LUU had not forgotten me and were going to give me sixty thousand dollars for my help if they sold the land in response to this offer. On this occasion my wife, in light of the prior treatment of her husband by defendants MINH and LUU, asked me please not to have anything more to do with these two defendants.

110) So, when defendants MINH and LUU

again called plaintiff at home a week later and asked plaintiff to take the purchase offer they had received for the land on Braddock Road and go to a bank for them to borrow against it, I asked them to meet me at my place of business, the van conversion shop, to show me the purchase offer document and explain to me exactly what they were requesting.

111) These defendants then did come to my work shop and explained to me that they could not borrow from banks any more because banks wouldn't lend to them and they wanted me to go to a bank and borrow for them against the purchase contract in the amount of one hundred thousand dollars ($100,000.).

112) They showed me the purchase contract which they represented to be the offer they had received from a church that

was a firm offer. In this purchase contract document the purchase price for the land on Braddock Road was set out at one million, one hundred and eighteen thousand dollars ($1,118,000.).

113) I did approach a bank for the defendants MINH and LUU with the purchase contract for the land but a week later the bank informed me it could do nothing for defendants MINH and LUU about the land. Angry that a bank would not lend such a relatively small amount of money against a purchase contract for such a large purchase price, I then called up the person from the church purported to be the purchaser whose name and number were on the purchase contract. This individual informed me over the telephone that the land was not worth more than six hundred thousand dollars ($600,000.) and that the

church did not intend to offer and had not offered any more than that.

114) Thus, this was a fraud and a deceit practiced upon the plaintiff by the defendants MINH and LUU in which they misrepresented the nature and substance of the offer or interest in an offer for the land which they had received and misrepresented and falsified the amount of money that had been discussed as the purchase price. This was done wilfully and maliciously with the intent to deceive both me and any bank or lending institution to which I went on their behalf. This was done with the intent to deceive and harm me and make me vulnerable to the further deceits and wiles of these defendants.

115) I and my wife did not see these defendants again until January of 1986,

the same month in which I closed down my van conversion business because of its lack of profitability. At that time my wife and I again became involved with defendants MINH and LUU in this way:

116) The defendants MINH and LUU called me and my wife on the telephone while I and my wife were at our home one evening in early February of 1986. On the telephone defendants MINH and LUU stated that they had heard in the community of the closing of the van conversion business by me and they wished to know if they could come over and visit with me and my wife that evening. I asked my wife if it would be all right and she said yes. Defendants MINH and LUU then came over and visited with me and my family that same evening, making small talk, but discussing no business.

117) These defendants knew how I and my mother-in-law operated together in businesses, with my mother-in-law supplying the capital and I supplying the management skills and experience. They knew that my mother-in-law and I, having closed down the van conversion business because it was not generating sufficient income, would soon be investigating other business opportunities and I now believe that they wished to reestablish friendly relations in order to watch for opportunities to involve me and my mother-in-law in one of their confiscatory schemes in order to take some of their money through fraud and/or extortion as later events showed.

118) The veri next day, the defendant LUU called me at my home and explained that she and defendant MINH had many

debts, law suits, checks being returned, attempts at foreclosure on real estate interests and other such things and that she would like me to work for them for a while to negotiate, settle and compromise these matters in light of all my business experience and English language skills.

119) In fact, I did go to work for these two defendants and, acting as their agent, negotiated many business matters, legal and court claims on their behalf over a period of approximately one and one half months, or up until the end of February or thereabouts, working with a large amount of business papers, contracts and suits filed against defendants MINH and LUU which they had given to me and working out of the oriental specialty food shop at the Mekong Center which defendants MINH and LUU ran or, on occasion, from my

home.

120) It was agreed between me and defendants MINH and LUU that they would pay me between eighteen and twenty-five dollars ($18. and $25.) per hour for this work. However, they did not pay me for all of my work. They did not pay me at all until mid-February, at which time they paid me by check a lump sum amount of one thousand dollars ($1,000.) This was not in accord with the agreement as to rate of payment. Nonetheless, I did continue to handle their affairs for several weeks more with the thought of billing them one more time and seeing if they would then keep their agreement. I tried to do my work well and, with one exception, concerning a suit over some property in which defendants MINH and LUU had dealt with defendant THACH, I was able to

negotiate settlements and compromises of all the deals and legal disputes of these two defendants.

121) Defendants MINH and LUU never intended to pay me for all of my work at the rate which they agreed to. Their oral agreement to hire me proved a fraud and a deceit, designed by them, among other things, to allow them to get close to the plaintiff so that they might know when I and my mother-in-law moved to purchase or start a new business.

122) During this period of February, 1986, in the middle of the month, I applied and was accepted for a position as a guard for the Wells Fargo Company. It took the Wells Fargo company about a week and a half to approved my application and hire me. I was fitted out with a security guard uniform, issued a gun license and

gun and was assigned to a route and was ready to go to work.

123) My wife at this time was offered an office job in the District of Columbia at a salary of seventeen thousand and five hundred dollars ($17,500.) and was ready to accept it.

124) When I informed the defendants MINH and LUU, however, that I was taking such a job, and that my wife was going to take a regular job as well they discouraged me and my wife from doing so vigorously, telling us that we should not take a job working for someone else but should have our own businesses. This was at the end of February.

125) When defendants MINH and LUU discouraged me and my wife about taking these salaried positions, I and my wife told these two defendants that plaintiff

was looking into acquiring a Sunoco gas station dealership. Defendants MINH and LUU then attempted to discourage me from going into the gas station business, telling me and my wife that the work was physically too hard, it was too hard to have to work out in the weather and cold all the time and 126) At this time, unbeknownst to me and my wife and mother-in-law, defendants MINH and LUU and defendant THACH had begun to deal with each other and defendants THACH and VO had been dealing together and had known each other for some time.

127) The two defendants MINH and LUU tried to discourage me from taking such a job with the purpose in mind that they wanted me to again go into my own business with capital from my mother-in-law so that they might, as they subsequently did, in

conspiracy with other defendants, obtain the capital and the business or businesses belonging to me by fraud and extortion. They had a narrower purpose in mind, as what turned out to be part of the scheme of fraud and extortion in which all defendants became involved, i.e., getting me and my wife and mother-in-law, as subsequently became evident, to put our work and capital into the Mekong Center specialty oriental food business which had been neglected and flagging for some time, and me and my wife into believing that they were getting a "deal" to purchase the said business cheap so that my wife and I and mother-in-law would revive the business with new energy, work and capital in order that the defendants MINH and LUU in cooperation with the other defendants might then extort the business back from

us by threats of force and violence and other forms of compulsion as well, such as economic coercion.

128) In 1979 the defendants MINH and LUU opened a restaurant business, a Chinese and oriental restaurant, in the Tysons Corner Shopping Center, Tysons Corner, Virginia. It was a business venture that did not turn out very well. Nonetheless they had high hopes for it and when it first began, defendants MINH and LUU asked my mother-in-law, who is ethnically Chinese Vietnamese, because of her knowledge of Chinese and other oriental food and cooking, to become involved in the restaurant. My mother-in-law refused to become involved and subsequently as the relationship between me and my wife and the defendants MINH and LUU went through its ups and downs, my

wife and my mother-in-law became suspicious of defendants MINH and LUU and came not to think much of them, which these defendants knew. Consequently, to overcome this suspicion and hostility towards them by my wife and mother-in-law, defendants MINH and LUU conceived and then carried out a clever deceit described more fully below, using a Vietnamese palm reader.

129) It was only a day or two after the conversation in which defendants MINH and LUU discouraged me and my wife from taking salaried positions that I had my telephone conversation with the area manager for defendant Sunoco, Ernie Peele in which Ernie Peele revealed to me that I would need seventy or seventy-one thousand dollars ($70,000. or $71,000.) in capital to obtain and start the service

station distributorship as set out above.

130) That conversation on the telephone with Ernie Peele was in the morning about 10:30 AM. Immediately upon finishing my conversation with Ernie Peele on the telephone on that occasion, I quickly called defendant VO on the telephone and told him, as the first person I so told, about the conversation and the amounts of money needed. I told defendant VO about the seventy or seventy-one thousand dollars ($70,000. or $71,000.) total capital needed and that I had access to thirty-five thousand dollars ($35,000.) of it but would need another thirty-five thousand dollars from defendant VO as is stated above.

131) We agreed that defendant VO would come to my house that evening. About 9PM that evening defendant VO came

to my home and we discussed the gas station. I drove defendant VO in my own car to the site of the gas station and showed it to him. Defendant VO said that he was very impressed with the location of the station and the heavy traffic there on Pennsylvania, S.E.. He said he did not see how you could have a gas station site that was much better and, as stated above, he told me to go ahead and call Ernie Peele, he had the money; he had, he said, a hundred thousand dollars ($100,000.) to loan to me if I needed that much, and he said that I did not have to worry about paying it back until I got the business going.

132) A few days after defendant VO had visited with me and viewed the gas station, I thought of how defendant VO had promised the personal loan of two thousand

dollars ($2,000.) earlier as set out above, and how defendant VO had dragged out coming through on his promise and then had shown up with less money than he promised. 133) Therefore, at that time, a few days after defendant VO and I viewed the gas station, I went to the Mekong Center Food Market and talked to defendants MINH and LUU about the gas station business opportunity. Without telling them about the negotiations with VO to borrow the necessary additional thirty-five thousand dollars ($35,000.), I asked them if they could help me obtain that extra amount I needed. Defendants MINH and LUU told me not to worry, that they would give me all the money I needed for the gas station, up to eighty thousand dollars ($80,000.) and that they would borrow it and lend it to me if necessary.

This was a fraud and a deceit. Defendants MINH and LUU had no such money and they knew it, and could not borrow it and they knew it. The statement was made with the intent to induce plaintiff to rely upon such false representation to his subsequent harm and detriment. At this time defendants MINH and LUU again told plaintiff that though they would get him the money for the gas station business, the gas station business was too hard, with the outdoor work in all weather.

134) Unbeknownst to me or members of my family, by the time of these conversations in early March defendants MINH, LUU and THACH had begun to communicate and deal with one another and, as I later learned from the defendants themselves, defendants VO and THACH had been communicating and dealing with one

another for some time. Both defendants MINH and LUU, who were communicating with THACH, on the one hand, and the defendant VO, who was communicating with THACH, on the other hand, were deceiving me and trying to "set me up."

135) The news that I was now very close to going into the gas station business and had half the money I needed caused defendants MINH and LUU to initiate action on the fraud and extortion against me which they were seeking to get underway. They now knew exactly how much money I had,knew they could go after it and that it was readily available, namely thirty-five thousand dollars ($35,000.) and so did the defendant VO for his own scheme of fraud and extortion.

136) I have it on information and belief that it was at this time, in early

March, that the defendants MINH, LUU, THACH and VO began to conspire together in order to deprive me both of his capital and the gas station business I was about to undertake. 137) To do this the defendants had to find a way to get from me the thirty-five thousand dollars ($35,000.) that my mother-in-law was ready to put up. This required getting my wife to change her hostility and persuade the mother-in-law to put the money first into a business that looked like it would have a quick cash return that could then be used to finance the gas station start-up, but once the money was in that business to get the business away from me and my family by fraud and extortion along with whatever the thirty-five thousand dollars ($35,000.) in capital had been put into. It required a business that would

appear to be attractive to my wife and my mother-in-law and which they could oversee without me.

138) When I and my family first came to Northern Virginia in 1976 the Mekong Center specialty oriental food shop run by defendants MINH and LUU, as previously stated, was prosperous and was the center of the local oriental community. It stayed that way up until 1983, at which time as defendants MINH and LUU began to neglect it in favor of their real estate promotions and other deals it began to decline and the customers dropped way off in numbers and loyalty. Whereas from 1976 until 1983, as could easily be seen, the business swarmed with customers and was doing thousands of dollars in business in each day, by 1986 in early March it was doing a hundred dollars ($100) a day or

so. It had been neglected and the stock of food was old and spoiled, so bad that it had become a notorious thing among the local Vietnamese community. It was evident that by replenishing the diminished stock and buying fresh new food goods and putting in hard work the business, given its location and previous good will, with new management could quickly be turned around. It was this condition that set me up to be defrauded in the Vietnamese palm reader ploy by which I was to be defrauded and extorted out of two businesses.

(e) The Vietnamese Palm Reader Ploy

139) The defendants MINH and LUU were anxious to pull off a fraud in which they would purport to sell their Mekong Center

specialty food shop business to someone and then, when the new "buyers" had stocked up the business with new food and supplies and built it back up, they would take the business back, being careful in the meantime to hold out orally to others that the "mark" or "marks" ostensibly buying the business were the new owners but being equally careful to not put anything in writing that would confirm the oral representations and agreements. Using the telephone, the defendants MINH and LUU had previously tried to sell the food center business to several parties for an amount around twenty thousand dollars, but those parties, also Vietnamese, had sensed that it was a trick in which they would not be able to stop defendants MINH and LUU from actually controlling the business even though they,

the would-be purchasers were ostensibly buying it. 140) The defendants MINH and LUU totally controlled the subleasing of all the stores -- jewelry, tailor, video, restaurant, gifts, etc.-- in the Mekong Center, because they held the long term master lease on the entire building.

141) Unbeknownst to me at the time, my wife and mother-in-law, as I later had it on information and belief, several years before the defendants MINH and LUU had kicked out a man and his wife whom the defendants MINH and LUU had taken on as "partners" in the restaurant on the second floor of the Mekong Center building a couple, also ethnic Vietnamese and then, after this couple had invested twenty thousand dollars ($20,000.) or more in this partnership, conducting much of the

negotiation by telephone.

142) This was a fraud similar to that which the defendants MINH and LUU were about to attempt upon my wife and me. Because, in this earlier incident, after the twenty thousand dollars ($20,000.) was invested in the partnership, the defendants MINH and LUU in the meantime having avoided getting into any written agreement with their "partners," these same defendants kicked these two other investors out and attempted to keep their investment without any compensation. On this earlier occasion, however, the deceived individuals, man and wife, sued defendants MINH and LUU and forced a return of their investment. This was a pattern of fraud involving use of the telephone that was about to be repeated upon my wife and me.

143) It was on or about March 6th or 7th, 1986, about two days after I had spoken to defendants MINH and LUU at the Mekong Center food store, that my wife and I were called at home about six o'clock in the evening and defendants MINH and LUU told me that I needed to come to the Mekong Center Food Store right away. I went there right away as asked.

144) I went and met with defendants MINH and LUU at the Mekong Center Food Store at 3107 Wilson Boulevard in Arlington, Virginia right away. The two defendants told me that they had no more time for the food store business because they were too busy with their new development of a large commercial building in Philadelphia, Pennsylvania.

145) The defendants MINH and LUU told me on this occasion that many people had

tried to buy the business of Mekong Center Food Store and that they "had" a buyer, but they did not want to sell to any of them; they wanted to sell to my wife and to me out of friendship and because they liked us. The defendants MINH and LUU told me that they would sell the business to him and his wife for twenty thousand dollars ($20,000.) which they said was a bargain because others had offered them twenty-five and thirty thousand dollars ($25,000. and $30,000.) for the business. This was a fraud and a deceit. There was no firm buyer, as these defendants well knew, whom defendants MINH and LUU "had" and there had not been many offers from buyers and there were no offers of twenty-five and thirty thousand dollars ($25,000. and $30,000.); the same was said in order to induce me to rely upon it,

which I did to my detriment.

146) The defendants asked me to go see if my wife would be interested in us buying the Mekong Center Food Store Business because they knew my wife was suspicious of them. I returned home to do that.

147) After I returned to my home, which at that time was at 2807 Key Boulevard, Arlington, Virginia, near my present home, my wife said that she would be interested in us talking to defendants MINH and LUU about purchasing the Mekong Center Food Business. I telephoned from my home to defendants MINH and LUU at the Mekong Center food store.

148) At my wife's request, I asked these defendants over the phone when they could meet with my wife and me to discuss the purchase of the food business.

Defendant LUU said that she and her husband, defendant MINH could come over that same evening after the food store closed around 8:30 or 9:00 o'clock PM.

149) A little after nine PM that evening defendants MINH and LUU came to my home as they had said they would. Defendants MINH and LUU came in to my home quite excited and very happy. They said that they had just been to the Vietnamese palm reader that day and had a palm reading and fortune telling by cards with a well known Vietnamese lady palm reader and fortuneteller, Mrs. Hieu.

150) The defendants MINH and LUU said they had prayed for good fortune and for the gods to tell them who they would sell their business to. They said that they had selected four people to whom they might sell their food store business,

defendant THACH, an ethnic Vietnamese man from Dallas, Texas, the palm reading lady herself and me.

151) Defendants MINH and LUU said that the first three people had all told them that they wanted to buy the food store business and that they had included me because even though my wife and I had not offered to buy the business they, the defendants MINH and LUU, wanted to sell to us because they were so close to them, like family.

152) Defendant LUU said that first, when the palm reader dealt the cards the card of THACH came up and the palm reader Mrs. Hieu told about THACH, (The palm reader not knowing by name who she was describing) and said that he was not suitable for the defendants MINH and LUU to sell their business to. The second

person whose card came up was the man from Dallas and the reading on him was not suitable as the person to sell to either. Then the card of the palm reader herself came up and the reading showed that she was not the one either. Finally my card came up and I turned out to be the one that the fortune teller predicted that these defendants should and would sell to.

153) This all was a concocted deception and fraud. By the nature of this type of fortunetelling with cards, the palm reader or fortuneteller does not know the names associated with the numbered card (a regular 52 card deck is used) and so there is no way to verify defendant LUU's story independently of her word, which was false and fraudulent on this occasion.

154) Later, after my wife and I had entered into running the Mekong Center food store and thought we were buying it, and had begun to order new, fresh food, I called Mrs. Hieu the palm reader on the telephone and was surprised to be told that Mrs. Hieu had no interest in purchasing the food store, had made no offer for it and said that she had no such capital as twenty thousand dollars ($20,000.) and knew nothing about the food business and had no interest in buying such a business.

155) So the same was a deception and fraud, committed with use in part of the telephone. There was no bona fide offer from THACH though THACH later, as part of the fraud and extortion in which he, unbeknownst to me at the time, was a co-conspirator, told me that he had made

such an offer. There was no man from Dallas who had made an genuine offer. All of this was a fraud and a deception, represented to my wife, my mother-in-law and me to be true when it was known not to be true and designed to play upon my wife's faith in palm reading and fortunetelling, of which these defendants knew. It was a fraud and deception which defendants intended my family and me to rely upon as we did to our harm and detriment and it was designed to get my wife, my mother-in-law and me to put our capital and energy into the food store business and get it going again so that these defendants and the others could extort it from us, as they did.

156) The defendants MINH and LUU pressed upon my wife and me again that though they had offers of twenty-five and

thirty thousand dollars ($25,000. and $30,000.) for the food store business they wanted to sell to me and my wife for plaintiff and his wife for only twenty thousand dollars ($20,000.) because they liked them and they were like family.

157) My wife and I told these defendants that we would like to think over the offer which these defendants had made to buy the food store business and that's how it was left that evening when the defendants MINH and LUU left my home about 10 PM or so.

158) The next morning I, after conferring with my wife and with my mother-in-law on the matter, called the defendants MINH and LUU at the Mekong Center Food Store about mid-morning. Defendant MINH answered the phone and I informed him that though my wife and I

thanked them very much, we were not very interested in going into the food business by purchasing the Mekong Center food store business because our capital was committed to the Sunoco gas station dealership we were applying for and we needed it for that, that my wife would be needed to help start up the gas station and that my wife and I would not have enough employees or enough of our own time to run two businesses.

159) Defendant MINH replied that he and defendant LUU would come over that evening again after closing the food store and would (English translation of Vietnamese) make my wife and I more happy with the food store than the gas station. This was on about the 7th or 8th of March.

160) That evening, after the hour of

closing of the food store at the Mekong Center, the defendants MINH and LUU again came over to my home and talked to my wife, me and my mother-in-law, Mrs. Phan Tu Anh. At this time the defendants MINH and LUU made a great effort to persuade my wife, my mother-in-law and me that my wife and I should buy from them, the defendants MINH and LUU, the food store business, and not go into the gas station business.

161) In an attempt to thus persuade my wife, my mother-in-law and me, whom they knew to be the ultimate source of the capital, the defendants MINH and LUU on this night stressed the arduous nature of gas station work, working out in the weather at all hours, and particularly for my wife, if she had to pump gas and help with mechanical work and do all the other things required in a gas station.

162) At this time the defendants MINH and LUU stressed to my family and me that they, MINH and LUU, were completely preoccupied with their new commercial real estate project in Philadelphia where they were buying two large three-story buildings. They described at great length this development and said how they "had" (translation from Vietnamese) many oriental food stores and other shops to fill the ground floors, condominiums were going to be upstairs in the top floors and how they "had" a law firm and doctors and other professionals to take the offices and condominiums. The stressed to my family and me that they were so preoccupied with the development of this project in Philadelphia that they did not have time to give to a business as small as the Mekong Center food store on Wilson

Boulevard in Arlington. They begged the plaintiff and his wife to take over the Mekong Center food store business on Wilson Boulevard.

163) The defendants MINH and LUU addressed the concern of his wife over sufficient capital, even if they took on both businesses at the same time, by stating that they "had" a bank president whom they had taken to dinner who had promised them up to five million dollars ($5,000,000.) in loans. "Don't worry about the money," they said (translation) "We have the bank president who has promised us five million dollars ($5,000,000.)" "We can make a note, you don't have to pay the money for the business, we put up the money and you can sign a note. All we want is to help your wife to have a good business."

(Translation into English.)

164) This was all a fraud and a deception, designed to entice my wife and me so that I might purchase the food store business, invest the capital from my mother-in-law in new food stock and the labor of my wife and me in the revival and rebuilding of the food store business so that the defendants then might extort from me my interest thus acquired in the food store business. The defendants MINH and LUU did not "have" such a banker. What they had was the defendant THACH as co-conspirator to pose fraudulently as such a banker, which is what subsequently he did.

165) Even with all this, my family and I still said that we wanted to think it over, because, as they stated it to these defendants, it seemed like two

businesses at once might be too much. Defendants MINH and LUU then left.

166) Again, the following morning, on March the 8th or 9th or thereabouts, I telephoned the defendants MINH and LUU at the Mekong Center food store about 10 AM. Again I informed these defendants that my wife and I had decided that two businesses were too many for our available resources, of capital, manpower and time, and that we had decided that we had better concentrate on the service station business.

167) Again, the defendants MINH and LUU expressed the concern that my wife and I were doing the wrong thing and that they, MINH and LUU were so busy with their big new commercial real estate project in Philadelphia, Pennsylvania, that they did not have time to run the Mekong Center food store. Defendants MINH and LUU asked

if they could again come over that evening and discuss the matter further.

168) That evening, of March 8th or 9th, the defendants MINH and LUU again came to my home about 9PM or so. Now the defendants MINH and LUU changed their tune. Instead of attempting again to convince my wife and me that we should invest in the Mekong Center food store by buying it for twenty thousand dollars ($20,000.) instead of investing in the Sunoco lease and dealership, the defendants MINH and LUU now changed their tune and attempted to convince my wife and I that my wife, my mother-in-law and I should invest in both businesses.

169) The defendants MINH and LUU now stated to my family and me that the money would be no problem because they had the arrangement with their friend whom they

said was the owner and president of the Bank and who had promised to lend them up to five million dollars ($5,000,000.) They asserted that they could easily arrange for me to borrow fifty-thousand dollars ($50,000.) from this bank as a small portion of this pledge from the owner and president of the bank and my wife and I could then pay to these defendants twenty thousand dollars ($20,000.) of that loan as the purchase price for the Mekong Center food store business and have the other thirty thousand dollars ($30,000.) to buy food and other inventory for the store from suppliers.

170) This, as stated before, was a fraud and a deceit, a repeat of the similar fraud and deceit on the previous evening, designed to "set me up" for the

extortion that was to follow.

171) To this, however, on this night I replied that I could not borrow from the bank because my credit would not allow it, since I had a bankruptcy on my record with the credit bureaus. bankruptcy on his record with the credit bureaus.

172) Then I told the defendants MINH and LUU the story of how I had been extorted out of a gas station dealership business previously that was also a dealership of the defendant Sunoco as set out more fully below. This was in 1982 in Prince George's County, Maryland and, as I explained it resulted in me being advised by my lawyers, who had been recommended by the defendant Sunoco, that unless I had thirty-six thousand dollars ($36,000.) to pay the lawyers, the man who extorted that station business from me was so strong and

politically well-connected that my only recourse was to file for bankruptcy to avoid having to pay the extortioner, who was also my lessor, the balance of a ten year lease that had only run two years.

173) The defendants MINH and LUU responded to this story that they were very sorry that this had happened to me and asked the question: "Why this country have no law ?" (translation from Vietnamese). They then said that was no problem in the present situation, however, because of their close friend whom they "had," the bank owner and president, and that they would just co-sign the fifty thousand dollar ($50,000.) note with my wife and me and the matter would be taken care of.

174) This was again a fraud and a deceit, as defendants MINH and LUU well

knew. Not only was it a deliberate misrepresentation as to the bank officer and owner and the availability of a loan, designed to induce my wife and I to act upon it to their harm, but it was also a fraud designed to set me up for the ensuing extortion in that while representing to me that my past experience with extortion that caused him to have to file bankruptcy would not be a problem in reality defendants MINH and LUU well knew it would be a problem because defendants MINH and LUU intended even then to do just what had been done to me in the earlier incident, relying upon the ineffectuality of the law in this country, and the same technique practiced upon me in this earlier incident, to extort from me the business they were inducing my wife and I to buy.

175) The defendants MINH and LUU told my family and me on this occasion that they were like family to my wife and me and that they thought the best thing for us was to both buy the Mekong Center food store and invest in the Sunoco dealership, because, they said plaintiff could run the gas station and his wife could run the food store.

176) My wife, my mother-in-law and I said that they would talk about the offer and decide.

177) The defendants MINH and LUU left. As they left, my wife asked that if she and I wanted to sign a lease for the space and open up the business as the new owners what would be an auspicious day to open the business (referring to astrological influences.) The defendant LUU replied that she did not know but that

she would consult and find out and let my wife know.

178) My family and I ate dinner and discussed the offer. My wife, who had been mistrustful of the intentions of defendants MINH and LUU now said that she was convinced that if defendants MINH and LUU would actually borrow money to enable my wife and me to make the purchase of the food store business then she believed that these defendants really wanted to help her and me and not just to sell the business and that if we would borrow the money we should go ahead and buy the food store business with the borrowed twenty thousand dollars ($20,000.) from the total of fifty thousand dollars ($50,000.) that defendants MINH and LUU were going to borrow with us from the bank.

179) After this dinner discussion on

or about the 8th of March, 1986, I called the defendants MINH and LUU at their home and told them of my wife's decision that my wife and I should go ahead and accept their offer and take over as owners of the business.

180) I then turned the telephone over to my wife who asked the defendant LUU what would be a good day for her and when the defendants MINH and LUU would sign the lease. My wife also asked the defendant LUU what she could do about the fact that my helpers and I would be tied up with opening the new gas station dealership and would not be able to help her much in getting the food store business going again.

181) The defendant LUU told my wife that she would consult and determine the most auspicious day for my wife and I to

open the Mekong Center food store as our new business. Defendant MINH and LUU also told my wife that they would consult and find out what was the most auspicious day to sign the lease and let her know soon. As to the problem of help, the defendant LUU said that she had a man who had worked in the Mekong Center food store for her and her husband for the past ten years who knew the store and the business and all the suppliers and she would get him to work for my wife and me now that we were taking over the business.

182) Again this astrological talk about auspicious days and signs on the part of these two defendants was a fraud and a deception designed to induce my wife and me in particular, to rely upon it to our detriment, as we did. It was known to be false. Although defendant LUU

subsequently represented that she had consulted and found that a mere two days later was the most auspicious day for my wife and me to "open" a new business by entering into the running of the Mekong Center food store and taking over the running of it in fact this representation was not based upon any reading of astrological signs or other such indicators but upon the fraudulent scheme and conspiracy of the defendants to defraud and extort from my wife and me.

183) Similarly, defendant LUU, in order to forward this scheme of fraud and extortion, never obtained or determined a "good" day for the lease to be signed as the plan which she and the defendant MINH had from the outset was to stall and delay and never sign the promised lease in order to deceive my wife and me into putting our

capital from my mother-in-law into new food inventory and entice my wife and me into building up and turning around the business to the point where it would be quite valuable and worthwhile to the defendants to extort it from us. So the representation that she would find an auspicious day for the signing of the lease was a fraud and a deceit intended to induce my wife and me to rely upon to our detriment, which we did.

184) During that same telephone discussion from our home to that of defendants MINH and LUU, after my wife and I told them of our decision to go ahead and purchase the Mekong Center food store, discussed with my wife and me the lease that was necessary for the operation of that business.

185) My wife and I asked these

defendants what kind of lease the business had, since it was obviously one of several businesses in shopping center. My wife and I asked what kind of lease we would be able to have now that we had decided to buy the business.

186) The defendants MINH and LUU replied that the lease would be for sixteen months, with an option to renew for five years after that, because, they said, that was the period of the balance remaining on the original term of thjje master lease that covered all the stores in the center and it had an option at the end of that term for five years. Therefore, they said, that I and my wife would have to enter a lease that conformed to this master lease: $2,000.00 per month for the sixteen months and for the five yuear period of the renewal option, if

exercised.

187) The next day the defendant LUU called me and my wife on the telephone at our home and informed us that a "good" day for "opening" the new business would be two days from then, on March 11.In this telephone conversation, the defendants MINH and LUU both told both me and my wife that the day March 11, 1986, was also a "good" or auspicious day for signing the lease for the new business and that they, defendants MINH and LUU,would have the lease ready for me and myh wife to sign on that day.

188) This was a fraud and a deception designed to induce me and my wife to rely upon it to our detriment, which we did, and it was well known to the defendants MINH and LUU that they had no intention of signing such a lease and intended to get

the capital and effort that my wife and I had invested into the business so that they, the defendants, might extort the business from me and my wife without compensating us.

189) That same day, March 9, 1986, I called defendant VO on the latter's "beeper" and soon defendant VO called back on the telephone and we talked. I told defendant VO about the decision of me and my wife to go forward with buying the Mekong Center food store, but explained the arrangement that defendants MINH and LUU had offered to borrow the money for us by co-signing for the purchase money for the business and for the needed new inventory from suppliers, so that my capital from my family for the gas station would not be affected.

190) The defendant VO expressed no

surprise, but said immediately; that is a good business and a good opportunity, a very good location, everybody knows it, with MINH and LUU gone, they will buy much and be your customers because nobody likes MINH and LUU. Go ahead, Mr. Hoai, and buy that business, he said, you will make a lot of money. The defendant VO even volunteered to bring help from his "large" construction firm to help out at the gas station and get involved in getting the gas station going himself in order, as he put it, to enable me and my wife to get the food store business going and make much money.

191) This was a fraud and a deception designed to induce me to rely upon it to my detriment, as I and my wife did. did. Defendant VO had no large construction firm and no such employees to move into

the gas station. I understand on best information and belief that defendant VO and the defendants MINH and LUU were in communication with each other, through defendant THACH or on their own, unbeknownst to me and my family at this time and the fraud was designed to provide an excuse for defendant VO to get into the gas station where he might, by fraud and extortion, deprive me of my own business and exclude me from it, since defendant VO on his own account could never meet the qualifications to own and operate a gas station distributorship. He had no employees who could be moved into the gas station to help out, but through various subterfuges and representations, many of them false and fraudulent in their own right, planned to find individuals whom he felt he could control, by such strategems

as not paying them, so that they would be financially dependent upon, or otherwise controlled by, himself so that they might have no economic alternative but to aid him in the extortion scheme.

192) Defendant VO encouraged me and my wife to go forward with the Mekong Center food store business as a fraud and deceit in order to facilitate the defendants MINH and LUU in their plan to strip me and my wife of our capital by continually postponing any lease or other document solidifying the purchase of the food store business while enticing me and my wife into using up their capital by having to buy new food inventory for the store because of the unusable old food there, with the belief being induced in me and my wife that we could sell the food and get the capital back for the gas

station as we quickly improved the food center business.

193) The next day, the 10th of March, with my wife, I went to the Mekong Center food store, relying upon the promises of the defendants MINH and LUU and the encouragement of the defendant VO and with our own supplies and materials fixed up and repainted the Mekong Center food store, which was badly run down and damaged. We fixed broken shelving and other fixtures, organized and arranged what stock seemed to be salvageable and got rid of what was obviously unfit and unusable.

194) When we arrived at the food store that day, about 8:30 AM, we saw defendants MINH and LUU there with another gentleman, rather stocky, all three standing in the store beside the cash

register. This third gentleman stayed another five or ten minutes and then left. These defendants did not introduce him to me at that time.

195) On that occasion, after the stocky man left, defendants MINH and LUU introduced me and my wife to everyone around, including the owners of the other businesses in the Mekong Center, as the new owners of the food store business to whom they, the defendants, were selling it. .

196) After defendants MINH and LUU introduced me and my wife all the way around to the other shopowners in the complex, my wife and I did our cleaning and fixing up as described above.

197) During this time of cleaning and fixing up of the premises I and my wife specifically asked the defendants MINH and

LUU: "What about the lease ?" Defendant MINH and LUU responded, saying that i would be ready for me and my wife to sig the following day.

198) This was a fraud as defendant MINH and LUU were merely inducing me an my wife to continue their work to build u the business by these misrepresentations They had no intention of allowing eithe me or my wife to own the business an longer than necessary to get the availabl capital of me and my wife tied into th business so that the defendants migh extort the business from them with th capital input of the plaintiff and hi wife and all the benefits therefrom to th business.

199) This was a fraud in anothe regard as well in that the defendants MI and LUU had a lease themselves, written i

English, with the owners of the buildin which housed the food market, th restaurant, the jewelry store, and all o the other Mekong Center activities. Thi lease, as it turns out, I have o information and belief, and as wa subsequently claimed by these same tw defendants, forbids subleasing unless th subleases be expressly approved in writin by the prime lessor. Nonetheless, th defendants MINH and LUU with almost al their subtenants, who, like them, wer ethnic Vietnamese, entered into "papers or leases written in the Vietnames language which were never disclosed to th prime lessor, never even translated int English in most instances, and which wer never approved by the prime lessor. Thu the representation by these two defendant that they had the authority and power t

so sublease was a false and fraudulent representation.

200) On this day, March 10, 1986, while my wife and I were cleaning up and reorganizing the food store they naturally observed that much of the food in stock was very old. The dried food in packages was old. The canned food was old and much of it beyond its expiration date. Many cans were visibly rusty and the seal of many cans and jars was visibly broken. Much of the food was in cans and jars that were damaged to the extent that the odor of spoiled food could be smelled coming from the cans or jars. Many containers of glass or plastic that were transparent could be seen to contain food that was visibly spoiled. My wife and I knew, upon information and belief at that time, from what we had heard from many in the local

Vietnamese ethnic community, that the defendants MINH and LUU were trying to sell old food and that this was part of the reason why the business of the Mekong Center food store had declined. That was why my wife and I had not been willing to agree to buy into the business until the defendants MINH and LUU had promised to arrange and co-sign for me and my wife to borrow the fifty thousand dollars ($50,000.) and so that my wife and I might use thirty thousand dollars ($30,000.) of this borrowing to buy new inventory. But still I and my wife were not prepared for, and were surprised by, just how bad it was and how much spoiled and rotten food there was.

201) In response to the expressions of surprise and even disgust by me and my wife as to how much rottenness and

spoilage there was, including evidence of rodent and insect damage, the defendants MINH and LUU told me and my wife two things that were not so, one that constituted a further fraud upon me and my wife and the second of which revealed a past pattern of racketeering activity on the part of these defendants in the form of fraudulent insurance claims using the mail and which would be repeated in front of me subsequently.

202) First, the defendants MINH and LUU represented at this time to me and my wife that the reason the food was old was that they, the defendants MINH and LUU, had been so busy with their big real estate project in Philadelphia, Pennsylvania, that they had had no time to order new food or keep up the business of the Mekong Center food store. These

defendants stated that that was the only reason the food was so old and they stated further that they had paid all the suppliers who sold food wholesale to the food store up to date and that the credit of the food store and the defendants MINH and LUU with the food wholesalers who supplied the store was good.

203) Secondly, when I was prepared to throw away some old, spoiled, rotten food that was in broken and damaged containers and unfit for sale the defendant LUU told him not to throw it away but to store it down in the basement (the basement of the Mekong Center building was used as storage for the food store) and she would show him how to make money out of it. She personallyh told me thatearlier she had had some old food like that and she knew how to flood the food in the basement and

88-765

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

APPENDIX II (Supplemental) PART C

Laurence A. Elgin *
John D. HEMENWAY
4816 Rodman St., N.W.
Washington, D.C. 20016

*Counsel of Record

CONTENTS OF THIS VOLUME OF APPENDIX II

(Supplemental) APPENDIX II

PART C

Partial text of the Sworn Affidavit of the PLAINTIFF/PETITIONER THANH VONG HOAI of March 25, 1987.

Paragraphs 204) through 318) pp 141-211

(Remainder of Affidavit in previous or subseqent parts.)

then claim the flooding did the damage and collect from the insurance company for the damage under the protection against water damage. Later she did this again, about a week later, with this very same food, collecting over fifty thousand dollars ($50,000.) and subsequently trying still to sell some of the same old, spoiled food. Defendant MINH confirmed to me later the carrying out of this fraud.

(f) Defendant Thach Emerges From Behind the Scenes

204) On the following day, the 11th of March, 1986, when I and my wife went to the Mekong Center food store at 8:30 to "open" the new business which, as we had been led to believe, we thought we were purchasing from the defendants MINH and LUU.

205) When my wife and I entered the

food store it was about 8:30 AM. Defendants MINH and LUU were again by the cash register talking to the same stocky gentleman. This time the defendants introduced the muscular gentleman to me and my wife. This, they said, is our friend Mr. Thach, the owner and president of the McLean Bank. If, they said to me, you need any help, Mr. Thach will help you, he is our friend.

206) The defendants MINH and LUU also had with them at the time two other gentlemen, whom they said were architects who were doing the design for their very big project in Philadelphia. These two gentlemen were carrying with them two of the very large thin briefcase type cases that are used by architects for carrying around drawings.

207) Defendants MINH and LUU stayed

around for only about fifteen minutes that morning, which was a surprise to me and my wife, who had expected defendants MINH and LUU to stay around long enough to help them get started. But defendants MINH and LUU said they had very important business in Philadelphia on their project there and they had to go. Whereupon these defendants disappeared, not to be seen for a few days.

208) As defendants MINH and LUU left for what they represented to be their trip to Philadelphia with defendant THACH and the two architects they told me and my wife that while they were gone, Mr. Sat, the long time helper of defendant LUU whom defendant LUU had previously discussed with them, would show them the ropes and he would fill them in on who the suppliers were and Mr. Sat would guide them and help

them order the food and introduce them to the suppliers personally and so forth.

209) Within a matter of days, my wife and I went to see many of the suppliers, who were, as it turned out, ethnic Chinese wholesalers in Washington, D.C., who supplied many oriental groceries and stores and restaurants in the area. My wife is ethnically Vietnamese Chinese and speaks a Chinese dialect. Far from being good, the credit of the Mekong Center food store and of the defendants MINH and LUU was so bad and the reputation of these defendants so bad that some merchants did not want to deal with the Mekong Center even when my wife and I were prepared to pay cash.

210) Now all of this was known to the defendants MINH and LUU and they deliberately induced me and my wife to

rely upon their fraudulently represented "credit" which these defendants knew was non-existent, knowing full well that in trying to run the business while these defendants deliberately absented themselves as part of the scam or fraud leading up to the extortion that was to follow, myh wife and I would have to get new, fresh, wholesome, saleable food and that in doing so we would encounter no credit and hostility and would thus be forced by economic necessity into paying cash for food supplies for the store and eventually restoring the relations with wholesalers and suppliers while restocking the store and repairing its reputation for selling rotten food.

211) When the three defendants MINH, LUU and THACH, with the two architects, left to go to Philadelphia as they

claimed, on this occasion, they made a big production of it and let me and my wife know that they had no time for a business as insignificant as the food store. All this was "part of the act" and the fraud.

212) These defendants, however, did see that my wife and I were seised of the leasehold and the business by turning over very ceremoniously to plaintiff and his wife the keys to the Mekong Center building, two keys for the two locks on the back door of the building and one key for the lock on the front door of the building, a key for the alarm system, a key for the basement of the building, which was used as storage for the food store, and a key for the cash register, the latter being devoid of any money or thing of value. To show that they were truly turning over the business to me and

to my wife as promised the defendants MINH and LUU informed me and my wife that the keys to the front and back doors were the only ones and that even they, the defendants MINH and LUU, had no duplicates of these keys.

213) Right away that same day, March 11, 1986, was when I went with Mr. Sat to the Chinese-American wholesalers in Washington, D.C., to attempt to buy new food because there was not enough saleable fresh stock of food in the store to do any significant business. And right away I discovered the truth about the terrible credit of these defendants MINH and LUU and their store the Mekong Center food store. Deliberatelyh instructing me and my wife to attempt to obtain food and other goods from these wholesalers was a deliberate misrepresentation and fraud

designed to induce me and my wife to have to use their own resources to buy food, and it worked.

214) Within three weeks of March 11, 1986, I had to spend the entire thirty-five thousand dollars ($35,000) which my wife's mother had for our new business ventures on new supplies and groceries for the food store business.

215) During this same period, however, the volume of the business at the food store rose accordingly as the word spread about new ownership and new food stocks, from about one hundred dollars ($100.) per day gross volume to about seven or eight hundred dollars ($700. or $800.) per day gross volume. This was right on target for the projections of I and my wife had made to get to two thousand dollars ($2,000.) a day gross

volume in six months. We saw in the records of the store that its annual gross volume in the years around 1980 had exceeded one million dollars ($1,000,000.) per year and in at least one year had grown to almost two million dollars ($2,000,000.) per year.

216) During this period, from March 11, 1986, on through the next three weeks, I attended to the business of the store every day, with a few breaks, or until about April 4, 1986.

217) During this time the defendant VO and the defendant THACH came to the store frequently and they encouraged me to continue buying more new food for the Mekong Center food store with the money available to me, which they well knew was the money that I had available from my mother-in-law, of thirty-five thousand

dollars ($35,000.), that had to be used in the gas station and that my wife and I were counting on the defendants MINH and LUU to co-sign a loan with the bank of which defendant THACH fraudulently claimed to be owner and president, to get the money back in time for the gas station distributorship to make use of it.

218) The defendant VO would come to the food store every second or third day or so and praise me and my wife for getting so much new food and saying that he, VO, would shop there and bring many others to do so. This encouragement was intended to and did have the effect of stripping me and my wife of our available capital so that defendants might extort both businesses from us, the one with all the capital tied up in it, and the other for lack of that capital thus tied up.

219) The encouragement of the defendant THACH was much stronger than that of defendant VO. Defendant THACH was around the food store or one of the neighboring stores quite often. He would praise me and my wife for being smart to buy so much food and kept stressing to us that we had to have enough on hand to satisfy the customers. Defendant THACH went so far as to tell me and my wife, with regard to food that only had a shelf life of a week or so, and consequentlyh we were were only ordering small quantities: go ahead and order more, if they don't buy it I will buy it from you and give it to the poor and to my relatives, I want to see your business prosper.

220) While the defendant THACH, and, to a lesser degree, the defendant VO, were making sure that my wife and I tied up our

capital in new food inventory for the Mekong Center food store which we thought we were purchasing on a special basis, defendants MINH and LUU were busy avoiding anything which, as they saw it, might make them vulnerable to being caught for the fraud and the planned extortion that was to follow.

221) On March 13 or thereabouts the defendants MINH and LUU again appeared at the Mekong Center food store in the afternoon, along with the defendant THACH, saying that they were back from Philadelphia and their big project there, saying that they were very happy there and very pleased with what they were doing for the Vietnamese community there and that they had a big project there, two whole buildings, The Mekong Asian International Center, with stores, restaurants,

condominiums, professional offices, etc.

222) When I asked defendants MINH and LUU about signing the lease which I had drawn up for them for the food store they put me off by claiming to be too exhausted and tired out by their big negotiations and business dealings in Philadelphia to get involved with it. When Ithen asked the defendants MINH and LUU about their not having any credit with the store's suppliers as I had discovered, contrary to their representations, they told me not to worry about because in a week they said that they would have enough money from the five million dollars they were going to borrow from their friend defendant THACH the president and owner of the bank and they would clear it up right away.

223) After plaintiff pressed these questions the defendants MINH and LUU

left, staying in all about 10 or 15 minutes on this occasion, and saying that they would be very busy and tied up in Philadelphia for some time.

224) Neither I nor my wife saw defendants MINH and LUU for another 4 or 5 days after this visit that was on the 13th of March, 1986, or thereabouts, until the 17th or 18th of March. On that occasion the defendants MINH and LUU came into the store around noontime. Again defendant THACH was with the defendants MINH and LUU.

225) On this occasion the defendants MINH and LUU opened up the conversation by telling me and my wife about how very nervous they were about the settlement of the two properties in Philadelphia and how concerned they were about whether they would have enough money to close the deal.

226) When I asked about the signing of the lease for the food store and the loan application the three defendants MINH, LUU and THACH put him off telling me not to worry, Mr. THACH would have the loan application the next day. As to the lease, defendant MINH answered my question as follows: Don't worry about this small Mekong Center food store, this is small business, let your wife handle it. I got a big business in Philadelphia, worth millions, said defendant MINH, and you are going to be my right hand.

227) When I then turned to defendant THACH that gentleman said, referring to defendants MINH and LUU, "Listen to your uncle and auntie, that is right, they got a very big deal." (All of these conversations were in Vietnamese.)

228) Between these two visits from

defendants MINH and LUU, the one on or about the 11th of March and the visit on or about the 17th or 18th of March, the defendant THACH came to the Mekong Center several times for one reason or another and so did the defendant VO. Once when defendant VO came to me, I asked him if he knew defendant THACH, to which the defendant VO replied that he knew him well in Viet Nam, that his father was a very rich man there and everybody knew THACH. I also asked THACH on this occasion if he knew that THACH was the owner and president of a bank here in Virginia, to which defendant VO responded that, of course, because THACH's father was so wealthy in Viet Nam, he could get a lot of money out to put in banking here.

229) During the visit on the 17th or 18th of March, 1986, I then asked these

three defendants, MINH, LUU and THACH, about the loan forms that I was supposed to fill out from the bank which defendant THACH ostensibly owned and was president of so that I might then go ahead and obtain the fifty thousand dollar ($50,000.) loan which defendants MINH and LUU had promised to co-sign for. I was told that the defendant THACH would see about the forms the following day.

230) A day later, on the 18th or 19th of March, 1986, I was approached at the Mekong Center food store by the defendant THACH. On this occasion defendant THACH invited me over to defendant THACH's house that same evening to dine and discuss matters.

231) I accepted this invitation from the defendant THACH and went to defendant THACH's home in Springfield, Virginia at

the above address that evening about 9PM without my wife to have dinner with defendant THACH and discuss matters, which I readily enough assumed included filling out the forms for the loan application.

232) When the I arrived at the home of the defendant THACH that evening I found that the defendant THACH was there with an architect who was busy drawing and working on site plans and other drawings laid out over a table in the living room. Defendant THACH explained to me that he was busy with the planning for the financing of the Philadelphia project of the defendants MINH and LUU. Defendant THACH confided in me on this occasion that not only was he the owner and president of a bank but he was also the owner of a "big" construction firm. In this construction firm, he told me, "we only

work on projects that are over a million dollars. ($1,000,000.) We don't bother with anything that is less than a million dollars. ($1,000,000.)" (Translating from the Vietnamese language in which the discussion was conducted.)

233) This again was another of the elaborate frauds and deceits being perpetrated upon me, as I now see. Defendant THACH had no construction firm that he owned and was not an officer of a construction firm of any such size, just as he was not the president and owner of a bank. This was another piece of the fraudulent scheme to induce me to rely upon the financial wherewithal and connections of the defendants which were in reality, as defendants well knew, fictional, so that I would sink the available capital which I and my wife had

into food inventory for the Mekong Center food store. It was also part of the fraud to convince me falsely that the defendants THACH, MINH and LUU were so busy with big, important multi-million dollar projects and businesses that I should not be bothering them about finalizing the sale of the Mekong Center food business which they had held out to me to induce him to start using up my capital in the acquisition of food inventory which, as later events were to show, the defendants intended to extort from me. In fact, I did rely upon these misrepresentations to my detriment.

234) On this occasion, when I asked the defendant THACH about the loan application forms for the fifty thousand dollar ($50,000.) loan, I was put off by the statement that the loan forms were

kept at the bank and not the defendant THACH's home and that the defendant THACH would start the processing of the loan forms for the promised fifty thousand dollar ($50,000.) loan the next day at the bank.

235) The defendant THACH then went on to tell me that it was important for me to clear up any other debt that I had while they were at the business of making this loan and that defendant THACH would see that any other debt which I had would be cleared up by the promised loan in one transaction. So the defendant THACH, using this as a pretext, then asked me to reveal all of the debt which I had.

236) This in truth was a further fraud, as defendant THACH neither owned nor was president of any bank and could make or control no loans for anyone, much

less add to them, but I relied upon this deliberate deception designed to deceive me to my subsequent detriment.

237) When the defendant THACH asked for this information, I had replied in truth that I had no other debt except that on my credit cards which at that time totalled around eleven thousand dollars ($11,000.) more or less on which I paid down monthly.

238) The defendant THACH then fraudulently represented to me that, as president and owner of the bank, he would take care of all my credit card debt and that it would be included in the forthcoming loan and that I need not worry about it any longer, defendant THACH would take care of it at the bank the very next day. To this end the defendant THACH had me that night at defendant THACH's home,

write down all my credit cards by name and number and the amount owing on each.

239) This was a fraud and a deceit designed to induce me to rely upon a misrepresentation in order that I would be less insistent that the promised papers for the promised loan be provided so that I would fill them out and get the co-signatures of the defendants MINH and LUU and get the loan. In fact, I did rely upon the deliberate misrepresentation to my detriment.

240) In addition this particular fraud and deceit was intended to make me unaware of the use to which defendants intended to put such information, namely to extort my businesses from me reveal all of my debt and to whom it was owed so that the defendants might make use of that information in coercing me and extorting

from me, which they did.

241) The defendant THACH had no intention when he made this promise of doing anything that in anyway would take over or consolidate my credit card debt and in passing weeks he, in fact subsequently did nothing, as I discovered the next month when I received my credit card billings. All the effect of this fraud, as intended by defendant THACH, was to cost me additional interest on my credit card debt and put more pressure on me for not having made my usual monthly paydown of that debt.

242) On this occasion also, of dinner at the home of defendant THACH, defendant THACH asked me how the gas station dealership application with defendant Sunoco was going. On the occasions earlier at the food store when defendants

MINH and LUU had been there with defendant THACH, defendants MINH and LUU had told defendant THACH about Sunoco "giving Mr. Hoai a very good location," and the defendant THACH, speaking in his fraudulent role as president and owner of a bank, had said that he liked to help gas stations.

243) I responded to this query by saying that it was going very well with the application to defendant Sunoco for the gas station dealership and that the defendant VO had committed to giving me as a loan whatever money I needed over and above my own capital to get the station up and running and that I was expecting further word from Sun Oil Company any day now. This again was an inquiry designed to further the conspiracy to extort by ascertaining that I had, in fact, become

dependent upon the defendant VO for the furnishing of capital in connection with the gas station dealership while the defendants MINH, LUU and THACH saw that capital that was available to the plaintiff was drained off into inventory for the food store, which they intended to extort from me along with the gas station, as I now know..

244) The defendant THACH said that was good because everyone knew that the defendant VO was very big in the hot dog vendor business, having ten carts or more with which he made a lot of money and that defendant VO was also in the construction business like the defendant THACH, where VO also was very strong. VO could lend the money, he said. This was a fraud and deceit designed to assure my reliance upon the defendant VO.

245) On this occasion at the house of defendant THACH I had stressed to defendant THACH the importance of getting the promised loan for fifty thousand dollars ($50,000.) soon and, as a necessary condition thereof, getting the lease for the Mekong Center food store signed, because as I explained, my wife and her family, pleased with the quick success in raising the sales volume of the Mekong Center food store, were ready to provide access to another line of credit for the purchase of additional food inventory in the amount of one hundred thousand dollars ($100,000.) through relations and friends in the Chinese business communities in San Francisco and New York as soon as the lease could be signed and the business arrangements for the purchase of the business finalized.

246) Defendant THACH replied to this by topping it, saying that he had a friend in California who was in the oriental food importing business and that he could pick up the telephone and call this man in California and that this man would give me a line of credit in the amount of five hundred thousand dollars ($500,000.). Defendant THACH offered to take me to California to meet this friend and set up such an arrangement.

247) This was a fraud and deceit designed to use a big lie to deflect me and my wife from dealing with the community of Chinese merchants and businessmen who might supply us such credit which would have been an obstacle to the extortion plans of the defendants. In fact, I did rely upon this fraudulent misrepresentation to my own harm and that

of my wife and mother-in-law.

248) Nonetheless, since I did not know at the time that this was a fraud I said that that would be good and asked the defendant THACH to go ahead and make such a call, to which the defendant THACH replied that he would but let him talk to the gentleman first and set it up before they would do any thing on it, which was a way of forestalling having to act on such a sham and fraud.

249) This particular fraud and deceit was also designed to induce me to keep on putting the capital available to me into more and more inventory all the better for the defendants to then extort from me both the food business and the gas station and during the evening as well the defendant THACH kept praising my efforts for getting so much good, new food and said that it

was amazing how the business of the food store was increasing and that I was doing the smart thing and the right thing by getting so much good inventory and that my wife and I were going to sell it all and make a lot of money.

250) After I left that dinner meeting that evening of the 19th of March or so, I saw defendant THACH almost every day at the Mekong Center for about a week thereafter, but the defendant THACH merely waved and said hello or made sociable talk on these occasions and never mentioned the loan or the lease or any other business dealings that he and I had discussed that evening. I assumed that this was because the loan arrangements, including the paying off of my credit card debt, were in process at the bank and I therefore felt it wise to wait about a week for such

processing before inquiring again, which was the desired effect on the part of defendants for this part of their scheme of fraud and extortion.

251) It was on the next day after this dinner meeting at the house of defendant THACH, on or about the 20th of March, 1986, that I was notified by Ernie Peele, the area manager of the defendant Sunoco, that Ernie Peele wanted to meet the next day with me to accept the deposits for the gas station dealership in the amount of five thousand dollars ($5,000.) for security deposit and another two thousand dollars ($2,000.) for rent deposit for the gas station and that I would need to bring with me friend whom he had told Ernie Peele about, the defendant VO, who was going to loan me the additional money I needed in the amount of

thirty-five thousand dollars ($35,000.) for the start-up capital.

252) Upon being called by Sun Oil Company's area manager on this day and being so notified, I immediately called defendant VO and paged him through his "beeper." Defendant VO responded and came to the Mekong center about the luncheon hour, where he encountered defendant THACH who also happened to come about that time and they meet in the sight of me and my wife and greeted each other familiarly as if they had known each other for some time whereupon they went upstairs to the restaurant in the Mekong Center and ate together.

253) Before the defendants VO and THACH went off to eat together on that day I had arranged with defendant VO that Defendant VO would come to my house that

evening.

(g) The Wire Fraud of Defendant Vo and Others

254) Throughout the period leading up to the meeting of March 21, 1986, between me, Sun Oil Company's area manager, Ernie Peele, and the defendant VO, the meeting described in the statements of paragraph 69 through 78 above, after soliciting the loan of additional capital in the amount of thirty-five thousand dollars ($35,000.) as set out above, I would check with the defendant VO and get from him assurances that indeed defendant VO had the capital and had it readily available for the time when the initial deposits and expenditures would be required.

255) On each occasion when I would check with the defendant VO, the defendant VO reassured me that he had the money

available up to one hundred thousand dollars ($100,000.) any time I needed it for the gas station, that his big construction business generated this kind of money.

256) This was a lie and deceit and a fraud, a deliberate misrepresentation designed to induce me to rely upon it so that I would not seek capital elsewhere through other loan arrangements and would rely upon defendant VO to produce and lend this capital to me. Unfortunately, I so relied upon these inducements and was harmed thereby.

257) Each time that I had talked to Ernie Peele on the telephone during this period from February 14 up until March 21, I would call the defendant VO on the telephone soon thereafter, often reaching the defendant through his "beeper" or

wireless remote telephone paging device. Then I would talk to him on the phone to tell him the latest word from Sun Oil company and get defendant VO's assurance that he was still in the deal with his money ready.

258) On that evening of March 20, 1986, the evening before the meeting with Ernie Peele, the defendant VO came to my home in Arlington at about dinner time. At that time I asked the defendant VO if he could have the seven thousand dollars ($7,000.) for the deposits the next day, because, as I told him,if the defendant VO could not provide the money as he had said all along he could, then I would have to get it somewhere else, but I needed to know before the meeting with Ernie Peele scheduled for the next day.

259) The defendant VO said no, that

I did not have to do that, that he, the defendant VO, had the money and he would have the seven thousand dollars ($7,000.) the next day as he had agreed.

260) That evening also, the defendant VO spoke to me of the one thousand and five hundred dollars ($1,500.) which he had made as a personal loan to me late in February as set out above, and he said that such money was nothing to him because he made so much money in his construction business and other businesses that such money was nothing to him, it was something to buy toys for the children and he gave it to plaintiff as a gift for toys for my children. I replied to the defendant VO that no, the one thousand and five hundred dollar ($1,500.) loan was a personal loan and I intended to pay it back. This

representation by the defendant VO was a misrepresentation designed to deceive me into thinking that I did not have to worry about paying back the personal loan of fifteen hundred dollars anytime soon when in fact the defendants were planning, as part of their scheme to defraud and extort, to accuse me of having borrowed the money for business purposes and not having paid it back.

261) The meeting with Ernie Peele, the area manager of defendant Sunoco, was set for 10AM the next day.

262) The next morning, when 10AM came, I was still waiting at my home for the defendant VO and defendant VO had not shown up.

263) I had called defendant VO on the latter's "beeper" service five, six or seven times, stressing into the "beeper"

recording service that it was a very big emergency.

264) Finally, about 10:15AM, the defendant VO called me at my house saying that he had gotten the message but that he was very busy with his big construction company and that he would be right over. This was a fraud since defendant VO had no large construction company that would keep him doing anything. It was the first of many acts of deceit whose purpose was to try and make the me look bad to the Sunoco personnel in order to gain the cooperation of the Sun Oil Company ultimately in the extortion scheme and it worked.

265) About ten minutes later the defendant VO arrived, driving in a hurry and insisted that I jump into defendant VO's car and not take the time to get my own car out of the driveway, then

defendant VO drove off with me in a big hurry. I explained to defendant VO that I was upset because I had never been late for an appointment with anyone from Sun Oil Company before.

Defendant VO told me not to worry, that Ernie Peele would wait for him. The meeting described above then took place at the Howard Johnson Motor Hotel coffee shop on route 1, starting about 10:45AM.

266) At this meeting at the Howard Johnson, when it came time to put down the deposit money of the five thousand dollars ($5,000.) for the security deposit and the two thousand dollars ($2,000.) for the rent deposit, I began to say that I would go to my bank and buy the cashier's checks for the two amounts and come right back but before I could do that (I said this in English in the hearing of Ernie Peele) the

defendant VO said no, that he would go to his bank and purchase the cashier's checks. He said to me and Mr. Peele: Mr. Ernie Peele is your boss, you sit and drink coffee with him, I'll go to my bank and get the cashier's checks.

267) Defendant VO then left. It was around 11AM or a little after. I just sat with Ernie Peele, the area manager of the Sun Oil Company and waited and waited. Finally, around about fifteen or twenty minutes after 2 in the afternoon, defendant VO returned with the cashier's checks, saying that he had gotten a ticket from the police and that is why he had taken so long. Defendant VO gave the cashier's checks, from the United Virginia Bank, to me and then I in turn handed them to Ernie Peele, who then gave a receipt to me acknowledging that I had made my

deposits for the dealership.

268) When finally I and defendant VO left the meeting, defendant VO, it turned out, had locked the keys in his car and it took me about half an hour to get the car door open with a coat hanger.

269) I have it on information and belief that defendant VO had no money such as he produced that day that was his money, but that he obtained the money from one of the other defendants or through the efforts or connections of one of the other defendants and that the story of the traffic ticket was a deceit designed to cover up that defendant VO had to take the time to get the money because it was not readily accessible in any account which was really his and that he had to meet with one or more of the other defendants and get directions on what to do.

270) After this meeting with Ernie Peele on March 21, 1986 was over, I and defendant VO returned to the Mekong Center food store which was busy and full of customers. Between the good business in the store and the securing of the dealership with defendant Sunoco, I was very happy and, as a result of my happiness and the need to get everything ready at the gas station on Pennsylvania Avenue, S.E., in Washington, D.C., I slacked off for several days in my efforts to get the lease for the Mekong Center food store signed.

271) That day, the 21st of March, when I and defendant VO returned from the meeting with Ernie Peele, the defendant VO and the defendant THACH encountered each other in the Mekong Center food store. They greeted each other by name and

obviously recognized each other and knew each other. They later went to the restaurant on the second floor of the Mekong Center building and spent some time together.

272) It is important for full understanding to refer to all preceding paragraphs 1) through 271) above for what follows:

273) From March 22, 1986, until March 28 or thereabouts I worked in the gas station at 2305 Pennsylvania Avenue, S.E., Washington, D.C., cleaning up the premises, receiving the Sunoco maintenance people and working with them to replace broken windows, lights, make the bathroom clean and sanitary and usable, including getting the plumbing working again, replacing broken pieces of material and equipment, pulling out the weeds and grass

that had grown up in the cracks, filling the cracks, cleaning up and getting rid of old tires and other debris, including junked engines and other heavy parts, repairing the roof, etc. During this time I worked long days and had no time to pursue the defendants MINH and LUU for the promised lease for the Mekong Center food store or defendant THACH for the promised application papers for promised bank loan.

274) On or about the 28th of March, or about six days after beginning this clean up and restoration of the gas station facility, I became concerned about the failure of the defendants MINH and LUU to provide the promised lease for the Mekong Center food store or, along with defendant THACH, the promised loan application papers.

275) On or about the 28th of March, 1986, I called the defendants MINH and LUU at their home in Virginia from the public phone at the gas station (at that time the private phone for the gas station had not yet been installed). The defendants MINH and LUU were not at home but their daughter was and she answered the phone. I left word that I would meet the defendants MINH and LUU that same day at the Mekong Center food store around 6 or 7 o'clock. I intended to press the defendants MINH and LUU about signing a lease.

276) I went to the Mekong Center food store late in the afternoon of that day and around 6:30 PM or so the defendants MINH and LUU showed up at the Mekong Center food store. I told the defendants MINH and LUU that I had a problem in that

I now had to spend all of my time with the gas station business which would only be more demanding on my time as the actual opening of it approached. I stated that with the opening of the gas station business fast approaching I soon would have no time, when the lease was signed, to go around to the various Arlington County offices and other places to see about the business license and other matters that had been held up pending the signing of the lease so that I could show that I had a leasehold in which I could establish the business as belonging to me and my wife. I told the defendants MINH and LUU that I must therefore have the lease as soon as possible.

277) To make my point I showed the defendants MINH and LUU the receipt from Ernie Peele, the area manager of defendant

Sunoco, for the two deposits totalling seven thousand dollars ($7,000.) which he had received on the 21st. The defendants MINH and LUU now knew that I was obligated to go ahead with the gas station but that my capital from my mother-in-law was tied up in the inventory of the food market.

278) Defendants MINH and LUU on this occasion told me that they understood my problem and they begged him "just a few more days" and they would get the lease for me. They were especially nice to my wife and told her not to worry, that they would sign the lease as they had promised and that I and my wife had invested so much in the store and taken it over and that they, the defendants MINH and LUU never intended to take the food store back and that they, the defendants LUU were always good to their word but that they

were so busy with their big real estate project in Philadelphia. My wife responded by saying that she believed them and she would wait for them to do as they promised.

279) The promises of the defendants MINH and LUU to do the promised lease and sign it within a few days were a further fraud and deceit. They had no intention then or ever of actually drawing up and signing such a lease, or even of signing one that someone else had drawn up. Their intention was to compel me and my wife to tie up more and more of the capital made available to them by my mother-in-law in the food store inventory so that the capital would not be available to the plaintiff in order that the other defendants, in conspiracy with these two defendants, might extort the gas station

from plaintiff and to simultaneously force me and my wife to convert as much of our available capital into food inventory for the store as possible without their being any protection of written documentation protecting the constructive and de facto ownership which they had led me into in order that they might have a more valuable prize when they extorted my interest in the food store business from him.

280) On the occasion of this meeting at the Mekong Center food store on or about the 28th of March I also asked the defendants MINH and LUU about the loan application which their friend, defendant THACH, the banker, had promised and which they had promised to co-sign. The defendants MINH and LUU stated in reply to this inquiry that defendant THACH was taking care of the matter of the loan

application and that they had already talked to him and that defendant THACH had said he would do it.

281) This again was a fraud in that these defendants knew full well that defendant THACH was not taking care of any such loan application and that defendant THACH would not do the loan and the defendants MINH and LUU deliberately misrepresented that he would in order to induce me to rely upon their promises so that he would continue with my wife to build up and revive the Mekong Center food store so that they might extort from me the value which I and my wife were building in the business by extorting from me the business interest thus built up and so that the capital from my mother-in-law which I had placed in the food store inventory would not be available to me for

my use in the gas station business.

282) After this meeting I went back to work preparing the gas station for its opening, surveying the neighborhood businesses around the gas station, announcing its opening and preparing to do business in the neighborhood. This went on for a few days.

283) On March 31, I entered into the lease and franchise agreement with the defendant Sunoco, which was signed by me and by Sunoco area manager Ernie Peele on behalf of Sunoco and Ernie Peele then said that he was taking the lease to Philadelphia for final approval at the headquarters of the defendant Sunoco.

284) Just after signing the lease on the 31st of March, 1986, I called the defendant VO and told him that I had signed the lease and that I had the lease

with Sunoco. The defendant VO at this time asked me over the telephone if he, the defendant VO could see the lease, to which I replied that he was going to the Mekong Center food store later to show the lease and franchise agreement to his wife. The defendant VO then asked if he could meet me there at the Mekong Center food store and see the lease at that time also.

285) Plaintiff did not know it at this time but the defendant VO intended to take, by an act of deceit, the original of the lease which belonged to me from me as a step in the planned extortion.

286) About 4:30 PM or so on that day I arrived at the Mekong Center food store and showed the lease and franchise agreement with defendant Sunoco, all signed, to his wife. About an hour or so

later the defendant VO showed up at the Mekong Center food store also and asked if he could see the lease and franchise agreement with Sunoco. I showed it to him.

287) Defendant VO told me that he was in a hurry to get back to the very big construction job he was working on but wanted to know if he, defendant VO, could have a copy of the lease and franchise agreement between me and defendant Sunoco. I said of course. This was a fraud; there was no very big construction job as this defendant knew, he only wanted me to rely upon this false representation in order that he might induce me to rely upon his false need to hurry in order that this defendant might take the original of the lease and franchise agreement.

288) The defendant VO asked if he

could take the lease and franchise agreement right then across the street to a photocopy service located there and make a copy before he returned to this very big construction job. I agreed that he could.

289) Defendant VO went across the street to the photocopy service and a little while later defendant VO returned and, saying "here's your lease," he gave me what he intended me to believe was the original of the lease and franchise agreement in a large envelope. This was a fraud and a deceit.

290) Later, after I had gone home, when I looked in this envelope I discovered that defendant VO had switched the photocopy of the signed counterpart of the lease and franchise agreement between me and Sunoco with the signed original and

had kept the original while giving me the photocopy in the envelope.

291) When I discovered this I called defendant VO right away on the "beeper." The defendant VO did not respond until the next day, when he called me on the phone. I asked the defendant VO why he had taken the signed original counterpart of the lease and franchise agreement instead of the photocopy as he had represented he was doing. The defendant VO responded by saying that he had taken the signed original by mistake and that he thought he had taken the photocopy.

292) Nonetheless, thereafter, the defendant VO never would return the original of the lease and franchise agreement between me and the defendant Sunoco to its rightful owner, me, though I pressed him to do so on many occasions.

Defendant VO, when pressed to return it, always made up some excuse. At first he said it was at the construction site of his very big construction job and he hadn't had time to get it. Then he said it was lost among others of the many papers at the very big construction site and it would take time to find it. Finally the defendant VO said that he had just lost the document altogether. When the threats of death and bodily harm began, I ceased to press the request.

293) This was the beginning of a series of events in which, in a somewhat simpleminded fashion, the defendant VO sought, by trick and subterfuge, and ultimately by threats of bodily harm and economic harm, to separate me from the emblems of ownership of what defendants perceived to be my gas station business

and the same all constituted badges of fraud.

294) A few days later, on or about the 4th or 5th of April, 1986, I considered that the few days which the defendants MINH and LUU had asked him to give them to get the lease for the Mekong Center food store prepared had run and so he began to press them again to sign the lease, telephoning them frequently at their home, or at the home of the defendant THACH, with whom the defendants MINH and LUU increasingly spent their time, or meeting them, often with the defendant THACH and/or the defendant VO at the Mekong Center food store.

295) Always the defendants MINH and LUU had some excuse as to why they had not prepared the lease. Sometime it was that they didn't feel well. Sometimes it was

that they had had a fight between themselves. Sometimes it was that their teenage children had left them and were going bad. Always there was the business about: Mr. Hoai, why do you concern yourself with small things, we are doing big business in Philadelphia, this is small stuff, let your wife run the petty business of the food store; don't concern yourself with such petty matters; you will be MINH's right hand in the big Philadelphia business, etc. This went on until April 25, 1986, or thereabouts.

296) From the time that the defendants MINH and LUU came to my house and began to talk to me and wife about purchasing the Mekong Center food store as set out in paragraphs 148 through 152 above, from that time on, I and the defendants MINH and LUU began to talk to

each other with increasing frequency on the telephone, calling each other often to discuss the business of my in getting the Sunoco dealership and franchise and then the food market, or the business of the defendants MINH and LUU in developing their Philadelphia project. I talked to the defendants MINH and LUU at least 3 or 4 times a week. Frequently, during this period, the defendants MINH and LUU would call me at home or at work and frequently, I would call defendants MINH and LUU at their home, which they also used for the conducting of their business, as they had no separate office.

297) Beginning in the first days of April, almost every evening that I called the house of defendants MINH and LUU, the defendant THACH would be at the house of MINH and LUU also.

298) After the evening on or about March 18, 1986, that I ate dinner at the house of defendant THACH as set out above, I also frequently called or was called by the defendant THACH. The defendant THACH asked me not to call him, THACH, at the McLean Bank which he was ostensibly president and owner of, because he said it would not look right for him, THACH, as the owner and president of a bank, to be seen talking to the Vietnamese people because people would wonder why he was helping other Vietnamese instead of Americans.

299) Beginning in early April also, particularly early in the evening, I would call the house of defendant THACH and THACH would be there with the defendants MINH and LUU.

300) Beginning just a few days into

April, when I would call the house of defendants MINH and LUU or THACH, the defendant VO would be there as well.

301) From early April on the defendants MINH, LUU, THACH and VO began to go places together with increasing frequency.

302) After the business with the original signed copy of the lease described above, in which the defendant VO stole that document from me by deceit the next thing that the defendant VO did was, by trick, and using the leverage of the money he was ostensibly putting up while my capital was tied up in the food inventory at the Mekong Center food store, to gain control of the checking account of my new Sunoco dealership and he did that in this way:

303) On about March 4 or 5, Ernie

Peele, the area manager for the defendant Sunoco, called my wife at the Mekong center and asked her to have me call him at home. On this occasion, as on many of the occasioms described herein, Ernie Peele called from Maryland to Virginia.

304) That evening I called Ernie Peele at his home. During this telephone call Ernie Peele told the me that I would have to hawe a bank account for the dealership right away in order that when the first load of diesel and gasoline was delivered when the station was opened on the 10th of April, the route driver delivering fuel would know to accept a check from me on an account as described to me by bank name and number by Ernie Peele. The route driver would have to have that instruction before he would accept the check and deliver the fuel.

This had to be cleared with the credit department of the defendant Sunoco in Philadelphia, Pennsylvania before that day so that the driver could be so authorized.

305) When I was told this by the Sunoco area manager Ernie Peele I waited until the next morning about 6 or 7 AM and called the defendant VO on his "beeper." When the defendant VO called me back two or three hours later in the day, I asked the defendant VO to bring in the rest of the thirty-five thousand dollars ($35,000) that the defendant VO had committed to lend, or twenty-eight thousand dollars ($28,000.) more or less (After providing the seven thousand dollars ($7,000.) for the deposits on March 21 as set out above) and to put it in the branch of the American Security Bank located near the

gas station at 2305 Pennsylvania Avenue, S.E.

306) The defendant VO replied to this request by telling the me that the American Security Bank was very badly managed. I asked the defendant VO how he knew that about the American Security Bank. The defendant VO said: I know that in fact. I will not put the money in that bank. The defendant VO then said: I know a very good bank and I will open the account at that bank and I will tell you later.

307) On that same day the area manager for defendant Sunoco, Ernie Peele, called me and asked me if he had the bank account and the account number yet. I did not have it. They left it that Ernie Peele would come around the station on the 9th and get the bank name and account

number.

308) The next day, around the 7th or 8th of April, the defendant VO stopped in to see me at the gas station while the Sunoco maintenance man, Mr. Lee, was working on the gas station pumps getting them in working order to be ready to open up on the 10th of April. I asked the defendant VO if he had opened the bank account. The defendant VO gave me in response two standard card forms of the type that are used in banks to authorize the opening of checking accounts (signature cards).

309) I did not pay attention to see the name of the bank on the cards. But I asked the defendant VO at this time what the name of the bank was where defendant VO was opening the account for the gas station. The defendant VO replied to me

that the bank was the McLean Bank, that it was a very big bank and that it was a bank that really tried to help the businesses, that it would not return checks when accounts were temporarily short. All the banks cannot give you that favor he said. I replied that I had never heard of the McLean Bank. Defendant VO asked why I had never heard of the McLean Bank because everybody knew it was a very good bank.

310) Now all of this about the banks was a fraud and deceit by the defendant VO. He did not know that the McLean Bank was a big bank, which in fact it was not, particularly when measured against the American Security Bank. Nor did he know anything about any mismanagement of the American Security Bank. All of these were deliberate misrepresentations made so that I, as I did, would have to rely upon these

misrepresentations and allow the defendant VO to force the choice of a bank that was in a relationship with the defendants so as to enable them to defraud and extort my businesses from me. And I relied upon these misrepresentations to my detriment.

311) I signed the bank cards which the defendant VO had on that day with my signature and the defendant VO did not sign them in the presence of me nor give any indication that he intended to do so but rather acted and spoke as if he was obeying the instruction of me to open an account for me.

312) Defendant VO then said he would take the cards as signed by me and open the account at the bank and I did not have to bother to come along. To this I replied by asking how come I did not have to come along and witness his signature on

the signature cards, to which the defendant VO replied that I did not have to do that because he knew the people at the bank and it was a very friendly bank. Defendant VO left.

313) Later that same day, after the defendant VO had left the station with the signature cards as signed by me, I called the defendant VO on the "beeper" in the evening to make sure that he would bring back the promised check book for the new account the next morning because, unbeknownst to the defendant VO, I had an appointment the next day with the insurance man, Mr. Floyd May, with whom I had dealt for many years in which I was going to pay Mr. May the payment for the binder leading to insurance on my new gas station business. This next day, the 9th of April, was one day before the opening

of the station on the 10th of April and it was the same day on which Ernie Peele was to come by and get the bank name and account number.

314) That same day, in the evening, after I called defendant VO on the "beeper," the defendant VO called me back on the telephone and told me that the bank account had been opened. The defendant VO said he was very busy that evening with the big construction at the big construction site and he could not bring the checkbook by but he would be sure to bring it by the next morning.

315) The next morning came, however, and the defendant VO did not come to the gas station and I still had no check book. Eleven AM was the hour of the appointment with the insurance man, Mr. Floyd May, who arrived on time and at that time also

Ernie Peele came to the station. I introduced Floyd May and Ernie Peele to each other and Floyd May gave me a strong recommendation in front of Ernie Peele, saying that he had done business with me many years. Ernie Peele said that he was very pleased to see the plaintiff obtaining his insurance before the station opened.

316) Because the defendant VO failed to show up with the checkbook and account number as promised, I wrote a check on my personal account to Floyd Mays and his insurance firm for sixteen hundred dollars ($1,600.) to pay the insurance and secure the binder.

317) I had to make up excuses for Ernie Peele to explain why I didn't have the bank account number. I told Ernie Peele the name of the bank, the McLean

Bank, but said that I had not had time, because of working on the station, to get to the bank to get the account number of the account which my friend VO had opened for me.

318) To this Ernie Peele replied that he could see that I had worked very hard on the station and that he was pleased with its appearance, so he understood and he then gave forms to me which Ernie Peele filled out for me all except for the account number and I signed. These were standard forms of the defendant Sunoco which had to be filled out on each dealer before the credit department of Sunoco could authorize the drivers to leave a delivery and accept a check. Ernie Peele said to me that he would stop by the station anyway for the grand opening and at that time I could give him the account

number which I could get from the bank in the meantime.

NO. 88-765

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

APPENDIX II (Supplemental) PART D

Laurence A. Elgin *
John D. HEMENWAY
4816 Rodman St., N.W.
Washington, D.C. 20016

*Counsel of Record

CONTENTS OF THIS VOLUME OF APPENDIX II

(Supplemental) APPENDIX II

PART D

Partial text of the Sworn Affidavit of PLAINTIFF/PETITIONER THANH VONG HOAI of March 25, 1987.

Paragraphs 319) through 436) pp 213-286

(Remainder of Affidavit in previous or subsequent parts.)

319) The next day was the long scheduled grand opening of the station. Many necessary acts and events were scheduled, as defendant VO well knew. Plaintiff went to the station around 7 AM. About 8:30 AM the defendant VO showed up at the station. He had a check book with him of "starter" checks from the McLean Bank. Ernie Peele of Sunoco was scheduled to arrive at 9 AM so I did not have much time. The load of gasoline and diesel fuel was scheduled to arrive at 10 AM.

320) I asked the defendant VO to give me the checkbook. The defendant VO then told me that he could not give me the checkbook because the bank had refused to open the account in my name and that he, the defendant VO, had therefore opened the account for his own signature. I was very angry but I had no time to be angry. The

defendant VO then signed six blank checks from the "starter" check book and left them with me, leaving in a hurry, saying that he had to get back to the big construction.

321) This was a fraud and a deceit, a deliberate misrepresentation following upon an earlier deliberate misrepresentation, designed, in both instances, to induce me to rely upon the misrepresentations to my harm and detriment, which I did. When the defendant VO said that the bank would not need to have me there at the bank to witness plaintiff's signature, that was a lie and it was a lie that he had even tried to open an account for the company for my signature. Defendant had intended all along to open the account in his own name and refuse to let the plaintiff have

knowledge of the account or its contents or control over it.

322) At this time also the defendant VO committed further fraud by telling me the outright lie that he, defendant VO, had put about forty-five thousand dollars ($45,000.) in this bank account at the McLean Bank. This lie and misrepresentation was designed to induce me to rely upon and write checks that would harm me and my business, having no choice but to write them, which I did to my harm and detriment.

323) I had decided upon the name for the business of the gas station and the corporation which I subsequently intended to form, of "Suntech Sunoco." To that end, when asked by Ernie Peele what name I wanted for the dealership, I had said "Suntech Sunoco." This was the name I

put on the application to Sunoco for the dealership, the name in which I had gotten my business occupancy license from the D.C. government, and the name in which I had ordered and paid for the insurance. It was also the name I had instructed the defendant VO to put on the account in opening it up for the station. In accord with this I filled in this name on the "starter checks," which defendant VO had brought to him.

324) Later I discovered that the defendant VO, in a further deceit, had opened up the checking account for the gas station at the McLean Bank in the name "Suntech Company," disobeying the instructions from me in a further deceit.

325) At 9 AM on opening day for the Sunoco station on Pennsylvania Avenue, S.E., April 10, 1987, Ernie Peele, the

area manager for defendant Sunoco, came to the station. I showed him the starter checks left by the defendant VO and Ernie Peele was satisfied on that score, not noticing that they were signed by the defendant VO and not the plaintiff. At this time I used one of the signed "starter" checks left by the defendant VO to give to Ernie Peele as the Sunoco area manager a check in the amount of one thousand four hundred and sixty-eight dollars and fifty cents ($1,468.50) to pay Sunoco for the inventory left from when the station had previously operated as a Sunoco dealership or franchise. I wrote this check by filling in the name of Sunoco as the payee, putting what I had chosen as the name of the business on the upper left corner of the check and filling in the amount stated all in reliance upon

the false representation of the defendant VO that he had put forty-five thousand dollars ($45,000.) in the account with the number on the "starter checks."

326) At 10 AM the route drivers from Sunoco in their tanker trucks arrived at the station, one with gasoline and one with a truck with diesel fuel. I paid these route drivers for their deliveries by filling out more of the signed "starter" checks given to him by defendant VO. To these drivers I gave "starter" checks on the aforesaid account at McLean Bank in the amount of around seven thousand and three hundred or four hundred dollars ($7,300. or 7,400.) for gasoline and about four thousand and five hundred dollars ($4,500.) for diesel fuel. Again, this was done in reliance on the deliberate false representation by the

defendant VO that he had deposited forty-five thousand dollars ($45,000.) in the account in the McLean Bank that the checks were drawn on.

327) That afternoon around 1:30 PM the delivery man of the TBA contractor came in his truck to deliver the Tires, Batteries and Accessories and other similar items (TBA). I gave this man another of the said "starter" checks which I filled in as the others but with an amount of about nine thousand dollars ($9,000.) representing payment to the TBA man for the TBA. Again this was in reliance upon the misrepresentation of the defendant VO about the money he put in the account.

328) I know upon information and belief that the defendant VO never put any money of his own in the account and indeed

that he had no money of his own, but that he merely took the cash proceeds from the gas station and put them in the said account over the next days and weeks to the harm and detriment of me as the false representations that he had put forty-five thousand dollars ($45,000.) were relied upon by me to plaintiff to my harm and detriment.

329) The defendant VO showed up at the station the next day, April 11, 1986, around 7 or 7:30 AM early in the morning, asking how much fuel and merchandise had been sold the previous day, insisting on seeing the readouts on the computers and asking how the pumps worked. The defendant VO asked me if I could train him to be a manager of the station, saying that he wanted to be the night manager for the station, which ran 24 hours. I

responded that, of course, I would train the defendant VO because he was my friend and because the defendant VO could then be my backup when I could not be there to manage. The defendant VO then insisted on taking the first day's receipts to the bank right away, he left and returned about an hour later.

330) After the defendant VO had stayed around all day learning from me how to manage the station, at the end of the day, about 7 or 8 PM, the defendant VO said to me (speaking, as they usually did, in the Vietnamese language) that money was money, and friends were friends and that he did not want the money situation to destroy his friendship with me so that he, the defendant VO would handle all the money for the gas station until, as he said, his lawyer could draw up a loan

document for the money he was advancing to me for the gas station business. Defendant VO said that until he had this loan agreement from himself to me drawn up by his lawyer, which he said he would have done, that he would take the daily receipts from the station and deposit them in the account which he had established for the gas station business in the McLean Bank.

331) I agreed that if the defendant felt that way he would agree to the defendant VO's handling the money until such an agreement was drawn up, but I asked the defendant VO to have the agreement drawn up by the defendant's attorney as fast as he could, to which the defendant VO replied that he would talk to the attorney in order to get an appointment to get the loan agreement

drawn up.

332) This was a fraud and a deception. Defendant VO had no intention of having such an agreement drawn up to memorialize the loan as actually agreed upon. Defendant VO had no intention of ever relinquishing control of the funds or the check book or statements of the bank account because he wished to cover up that he had not put the money he represented in the gas station account or anything close to the amount he represented. He had no intention of ever actually loaning the money as he agreed and, in fact, had no such money to loan. By these misrepresentations, defendant VO meant to induce me to rely upon them so that I might be vulnerable to the extortion that was to follow, and I did so rely.

333) Likewise, it was a fraud and a

deceit for defendant VO to tell me that he wanted to be trained to be the night manager of the station and to support me as his friend and backup. In reality defendant VO's only purpose was to learn to operate the station without me as fast as he could so that he might extort it from me.

334) From this point in time on the defendant VO no longer seemed to need to devote so much time to "big construction" but spent all day every day at the gas station.

335) In accord with my promise to train the defendant VO I did train the defendant Vo for the next few weeks in how to manage a gas station.

336) About four or five days after the opening of the gas station, on about April 14 or 15 or thereabouts, the

defendant THACH showed up at the gas station one day about 3 or 4 o'clock in the afternoon. The defendant THACH looked all around the station and was all smiles. You have a very good business, here, Mr. Hoai, he said, you're going to make a lot of money.

337) On this occasion the defendant THACH said to the plaintiff that the station was so busy and had such a volume of business that it would be a good site for a "mini-market" that would sell food, drinks and sundries and that he would have a plan drawn up for such an addition.

338) I informed these two defendants VO and THACH that Sunoco already had plans for a market on the site, called in the company a "C Market" and already had drawn plans for modifying the building for that purpose but that Sunoco required the

volume of fuel sales to be increased to over one hundred thousand gallons a month before they would implement such a plan. The station was then selling, having just opened, at a rate of about fifty or sixty thousand gallons a month of fuel.

339) At this time the defendant VO who was there said to me and the defendant THACH that a market was a good idea and he would move one of his hot dog vending trailers in to the station and sell hot dogs. To this I replied that this was illegal and that Sunoco would not allow it. The defendant VO said not to worry about Sunoco because the station was "our" station and we can do what we want. I explained to the defendant VO that though I had the franchise and the lease, Sunoco owned the property and was the lessor and that also they had no license for such

food sales. The defendant VO responded that they would just bring in the hot dog trailer anyway until Sunoco complained and then, he said, we will talk to Sunoco.

340) This was a fraud and deceit. Defendant VO had no intention of talking to Sunoco. He intended to get another source of income with which to play his "Ponzi scheme" of putting money into the aforesaid bank account to try to cover the checks he had induced the plaintiff to write before they "bounced." Right away the next day defendant VO moved a hot dog trailer into the gas station and had his relatives and in-laws selling hot dogs, drinks and other foods out of the trailer, so that he could generate, as he did as near as I could tell, another three or four hundred dollars ($300. or $400.) a day to put in the aforesaid bank account.

Defendant VO never allowed any of this money to be in the access of me or in any way offered to let me benefit from the sales of the hot dog trailer which defendant VO moved in on my gas station.

341) Defendant VO also meant to cause trouble between me and Sunoco as part of his plan to take over the business of the gas station by fraud and extortion, as his subsequent behavior showed.

342) When defendant VO brought the hot dog trailer into the station I asked him to get it out the station because it was against the rules. Defendant VO told me not to worry about it, because, he said, this is the way we can make money, we can make a profit. (He never, however, offered to share any of the income from the hot dog trailer with me or to pay me or Sunoco any rent for the space.

Nevertheless, I, in the interest of not offending someone who he felt was a friend who had loaned him money, said nothing further at that time.

343) A few days later, Ernie Peele came to the station on business for Sunoco and when he saw the hot dog trailer, he asked me who had put the hot dog trailer there. When I replied that it was my friend VO, Ernie Peele instructed me to tell the defendant VO to remove the hot dog trailer.

344) That same day, after Ernie Peele had left, I told the defendant VO that Ernie Peele had told me to tell the defendant VO to remove the hot dog trailer. The defendant VO replied (in the Vietnamese language) that Ernie Peele was just a black guy and that he and I did not have to listen to Ernie Peele because he

was black.

345) The defendant VO then proposed to me a plan that would change their situation and make Ernie Peele happy. The defendant VO said to me that he wanted to put more money into the gas station in order to make it grow faster, as he put it. He wanted to put in the rest of his hundred thousand dollars ($100,000.), which would have been fifty-five thousand dollars ($55,000.) over and above the forty-five thousand dollars ($45,000.) he claimed that he, the defendant VO, had already put in the gas station's account at the McLean Bank. The defendant VO proposed that he would put in this additional money and increase business by a plan of advertising, on radio and in newspapers, and promotions, such as giveaways of toys to families making large

purchases, and so on. If this was done, the defendant VO explained to me, then Ernie Peele would be happy because the business of the station would be growing so fast and Ernie Peele wouldn't be concerned about the hot dog trailer on the station premises.

346) Because I still believed at this time that the defendant VO was really putting up money, I told the defendant VO that this was a good plan.

347) The defendant VO then said that since he was going to put in more money he wanted to be a partner in the business and change the situation from being just a friend giving a loan to one of being a partner in the business. I told the defendant VO that he did not think he could just make the defendant VO, or anyone else for that matter, a partner in

the franchise or the lease, since he was the individual named in those two documents and that he thought that Ernie Peele, as the Sunoco area manager, would object to his making VO a partner in the business, especially since the defendant VO had told Ernie Peele back on March 21 when Ernie Peele had questioned him closely about possible ownership interest in the gas station that he, the defendant VO, had told Ernie Peele that he had no ownership interest in the station, hidden or otherwise and that he had no interest in any such ownership and was only making a loan to a friend.

348) To this the defendant VO responded that he did not mean he wanted to be a partner in the franchise and lease but only in the profits and that he could invest in the gas station business and be

a partner in the profits as a return from that investment and there was nothing that Sunoco could do about that.

349) I said that he would agree with this because (and this I fully believed) the defendant VO was my friend who had already helped me by lending thirty-five thousand dollars ($35,000.) to me to start the gas station business.

350) Defendant VO proposed that since he was now going to be investing one hundred thousand dollars ($100,000.) in the station, he wanted to split the profits from the gas station business with me 50-50 and he said that by profits he meant the amount left after basics such as rent, utilities and other general expenses were paid. I agreed to this new arrangement.

351) Defendant VO brought up two

things as part of this "new situation." First he said he wanted to be on things such as the business occupancy license by name and he also said that he would produce good "certified mechanics" for the station as part of his support of the business.

352) When I applied for the franchise and lease from the Sunoco I contacted and brought to the station qualified mechanics whom I knew who were certified both for mechanical work and re-inspection of motor vehicles to meet the requirements of the District of Columbia motor vehicle laws for vehicle re-inspection. These individuals came to the station after I opened it up on April 10, 1986, and did some work. After the defendant VO stated his aspirations to become a station manager as set out above and began staying

at the station night and day, these individuals came under the supervision of defendant VO during the frequent long periods when they were at the station with the defendant VO and I was not there. Later, in the last part of April, after this conversation alluded to above, when I was trying to regain control of my gas station lease and franchise, these individuals told me that they would not come back and work at the station as long as his friend VO was around. They refused to elaborate at the time on why they would not do so but stated that it was because of the defendant VO and things that he had done. I know it on information and belief that defendant VO deliberately drove these individuals away as part of the conspiracy to defraud and extort the station from me.

353) At this time, on or about April 17th or 18th, 1986, the defendant VO stated to me that as part of this new "partnership" in the profits of the station, he would bring in "certified mechanics." This was a fraud and a deceit. Defendant VO had no present intention at that time of bringing in certified mechanics, but only of bringing in individuals who were under his control and loyal to him for various reasons so that he might, with his co-conspirators, more easily extort the station from me when the time came to reveal his true intentions and engage in threats of harm and physical violence and death to me and my family. At the time, however, I unsuspecting, relied upon this misrepresentation to my harm and detriment.

354) In this same conversation, on or about the 17th or 18th of April, 1986, the defendant VO also stated to me that as my partner in profits of the station, he wanted his name on the various licenses of the station along with mine. Reluctantly, I agreed to that and told the defendant that the very next day he was going to the Department of Licenses and Inspections of the D.C. Government to obtain the occupancy permit for the station, which had to be obtained within thirty days of the opening on April 10, and he would put the name of the defendant on the occupancy permit. And the very next day I, accompanied by the defendant VO, went to the Department of Licenses and Inspections and, in the forms that he filled out for the occupancy permit, he put the name of the business as "Suntech Sunoco," and

listed himself as the president of Suntech Sunoco and the defendant VO as a "partner" in Suntech Sunoco.

355) This was part of the fraud and deceit of the defendant VO. The defendant VO had no intention at that time of being the "partner" in profits of my station. He had no intention of sharing in partnership with me. His intention was to gain sufficient practical control or "leverage" over the business to make it easier to force me to give up the business by extortion and threats of violence.

356) Persuading me to put his name on the occupancy permit was a fraud and deceit by defendant VO, intended as a step to enable the defendant VO to be in a position to steal the business name of Suntech Sunoco and represent himself fraudulently to the authorities as the

owner of the franchise and lease so as to illegally and fraudulently obtain licenses and permits in his own name once the intended extortion had been carried out.

357) Now all of this about putting more money in and getting more involved as a partner in the profits of the station on the part of the defendant VO was a fraud and a deceit. The defendant VO had never had a hundred thousand dollars ($100,000.) in capital as he well knew. He never put forty-five thousand dollars ($45,000.) in the company account as he had represented and he did not have and had no intention of putting into the gas station business any additional fifty-five thousand dollars ($55,000.) to fill out the one hundred thousand dollar ($100,000.) pledge which he had fraudulently made. The defendant VO had no intention at the time of

financing or undertaking any advertising and promotion campaign such as he described and promised and he never did undertake or finance any such effort or put up any of the promised fifty-five thousand dollars ($55,000.). All of this was intended to make me feel dependent upon him to my harm and final detriment so that I might be vulnerable to the extortion that was to follow.

358) Along about the 19th through the 22nd of April or thereabouts, the defendant VO brought into the station the men he said he was hiring to fulfill his pledge of bringing in "certified mechanics." None of these individuals were certified mechanics as promised. All, however, were from the Philadelphia, Pennsylvania, area, from Texas, or somewhere else outside the Washington,

D.C., metropolitan area, so as to have no local connections and so that there be no chance of their upsetting the extortion scheme. All were induced to come by various misrepresentations, including particularly that the defendant VO was the owner of the lease and franchise. One individual, named Chung, was from the Philadelphia, Pennsylvania, area, and was, or claimed to be, a man with a degree in mechanical engineering. He had been induced to come by promises that were false as to the ownership of the station, the size and nature of defendant VO's interests in the petroleum and service station business and the nature of the position he was to occupy. Another was named Giao. He also was induced to come by false promises. I, HOAI, have it on information and belief. Another was a

young man known only as Peter. Peter was from elsewhere, had no relatives or friends and, since the extortion and his troubles with the defendants, has disappeared.

359) The defendant VO preempted all management control of these individuals and said that he was hiring them, but did not hire them in accord with law, paid no withholding on them, did not register them and their employment as required to meet various laws and regulations, paid them only sporadically or often not at all, and gave them no proper regular salary or employment in the sense in which that term is understood in American society. The defendant VO treated these individuals as kind of a private, contract labor force with whom he could do as he pleased. He never kept proper records or proper

accounting records with regard to them.

360) Along about the 17th of April, 1986, or thereabouts, I went in the evening to the home of the defendant THACH, whom, at this time. I, HOAI, still believed to be the owner and president of the McLean Bank as the defendant THACH had fraudulently led him to believe. At the home of the defendant THACH I asked the defendant THACH where the long-promised loan application forms for the fifty thousand dollar ($50,000.) loan promised by defendant THACH and the defendants MINH and LUU were. At this time the defendant THACH replied that the defendants MINH and LUU had instructed him not to give the loan forms to me after all. He offered excuses and alibis for this breach of the promises which he and defendants MINH and LUU had made. Then he, to my surprise,

told me that I was lucky that this had happened because, he said, the defendants MINH and LUU had never intended to give any of the fifty thousand dollars ($50,000.) promised to me anyway but rather to keep it all for themselves. In reality this was another fraud and deceit designed to get me further into the trap which the defendants were building so that they might extort both business interests from me and my wife, both the gas station and the interest built up in the Mekong Center food market.

361) At this time the defendant THACH asked me how the gas station was going. I said that it was going well and business was building up. During this conversation the defendant THACH, surprisingly, told me that he did not think that the defendant VO had any money

in the gas station. I, who, at this time, believed that the defendant VO had put forty-five thousand dollars ($45,000.) in the gas station's account that he had opened up as he represented, did not believe the defendant THACH when he said this and told the defendant THACH that I did not believe it. The wily THACH was "softening up" me up by telling me these truths in order that I would continue to believe in THACH, the phony bank president, even after the dishonoring of checks on that account that defendant THACH knew I was to become disillusioned with the defendant VO.

362) From the day of the opening of the station on April 10, when I, HOAI, had written in the amounts on the checks signed by the defendant VO, until April 24, 1986, I did not fill in or issue any

more checks on the station account. I had only issued the checks to Ernie Peele, the Sunoco drivers and the TBA representative on that day, April 10, as alleged above. Nor, so far as I know, did the defendant VO write any checks on that account during that period. At least I, HOAI, know of no disbursement by check on behalf of the gas station that was made during that period from April 10 until April 24. The employees had not yet been paid any salary and no other expenses had been paid.

363) Every day, beginning with April 11, as alleged above, the defendant VO had taken the receipts of the gas station and had disappeared with them every morning about 7 AM when the shift changed, saying he was taking the money to the bank. I, HOAI, and the defendant VO would count these receipts every morning before the

defendant VO would go off with them and these receipts, as I recall, averaged about one thousand and five hundred dollars ($1,500.) per day during the two weeks from April 10 until April 24, 1986.

364) Late in the morning on the 24th of April, 1986, I received a telephone call at the gas station from John Pendergast in Philadelphia, Pennsylvania, the head of credit for the Sun Oil Company. John Pendergast asked me how things were going with the gas station and when I replied that everything was going perfect, John Pendergast then asked me how come I had just bounced a check to Sunoco for over seven thousand dollars ($7,000.) for the gasoline that had been delivered back when the station opened on the 10th of April.

365) I was completely surprised. I

told John Pendergast that I would have to contact the bank and find out what was going on and then get back to him.

366) Immediately after I had hung up from talking to John Pendergast, the credit supervisor for the Sun Oil Company, I went to the defendant VO, who was there at the station and demanded to know from him why he had lied to me about lending me thirty-five thousand dollars ($35,000.) and putting forty-five thousand dollars ($45,000.) in the bank and putting in even more money into the business, up to one hundred thousand dollars ($100,000.). I asked him where the money was.

367) The defendant VO replied that his father had not given him the money because his name wasn't on the franchise agreement.

368) I, HOAI, asked the defendant VO

why all this talk about defendant's father. I told the defendant VO: :You never told me you had to get your money from your father, you told me you had the cash on hand, one hundred thousand dollars ($100,000.). I asked you at least fifty times, "I said to him "you said you had the money."

369) The defendant VO began to blame it on the defendant THACH, saying: "That god-damned Thach, he said he put the money in the account. I don't know what has happened to him. Let me go to see him and I will be back to tell you what happened." This statement revealed to me for the first time that the defendants VO and THACH were colluding together in connection with the financing of my gas station franchise and dealership.

370) Defendant VO was acting very

agitated and nervous. After this discussion he got in his van and drove off.

371) After defendant VO left, I called the McLean Bank and identified myself as the owner of the station franchise and said I wanted to check on the station's account. The bank official who answered said that according to the computer, the gas station was overdrawn over one thousand and five hundred dollars ($1,500.) and that a check had been returned for insufficient funds in an amount of over seven thousand dollars ($7,000.). I said thank you very much and hung up.

372) Later in the day, in the evening, I, HOAI, called the defendant THACH on the telephone and, failing to reach him at his own house, located the

defendant THACH by telephone at the home of the defendants MINH and LUU. I asked defendant THACH what was going on, that defendant VO said that he, the defendant THACH, had put money in the gas station's account in the McLean Bank. Why did the gas station's check for gasoline to Sunoco bounce.

373) The defendant THACH displayed no surprise in his voice and said that it was because the defendant VO had "not listened to" him. I replied "listen to him what ?" I said that defendant VO had told me that he had one hundred thousand dollars ($100,000.) on hand and that he, the defendant VO, had put forty-five thousand dollars ($45,000.) in the McLean Bank. I asked the defendant THACH on the telephone why he hadn't put the money from defendant VO in the bank account.

374) The defendant THACH informed the plaintiff that the defendant VO had given him no money and he couldn't put money in the bank if the money wasn't given to him. Defendant THACH then told me that the defendant VO had never put any money in the account since the station had opened, that all the defendant VO had done was put the money in every day from the gas station.

375) I then asked the defendant THACH how he knew so much about a single account out of so many in the bank and the defendant THACH replied that he was the owner of the bank and that he knew about every account in the bank. The defendant THACH told me that I could not get blood out of a stone. I asked the defendant THACH what he meant by that and the defendant said that the defendant VO did

not have the money and so he could not put it in the gas station.

376) I, HOAI, said that the defendant VO had confirmed with him many many times that he had a hundred thousand dollars ($100,000.) on hand in cash. The defendant THACH told me that if I saw defendant VO, I should tell him to come see THACH and bring his assets statement and he, the defendant THACH, would put the money in the bank for the gas station.

377) I ended the conversation by asking the defendant THACH to remind the defendants MINH and LUU to sign the lease for him on the Mekong Center food store. The defendant THACH asked me to keep calm and said that he, the defendant THACH, would get the defendants MINH and LUU to sign the lease.

378) The next day the defendant VO

did not show up. I telephoned the Sun Oil Company's credit manager John Pendergast, in Philadelphia, Pennsylvania, and told him that I had checked at the bank and that there was indeed no money in the account and that I still did not know what had happened or whose fault the error was but I would let him know as soon as I did.

379) John Pendergast told me that it didn't matter whose error it was, from now on I would have to pay with a certified check or cashier's check, that I had to make up the bounced check with a certified or cashier's check right away and that if it happened a second time th plaintiff would half to use cashier's checks in dealing with Sunoco for life, no more personal checks, no more business checks.

380) This was part of the deliberate plan of fraud and extortion of the defendants, to damage plaintiff's relationship with defendant Sun Oil Company in this way.

381) The next day, April 26, 1986, in the morning the defendant VO was at the gas station about 7:30 AM when I arrived for work.

382) I asked the defendant VO where he had been. The defendant VO said that he had been up in West Virginia to see his father to ask him for the money but that his father had said that he wouldn't give him the money because his name wasn't on the lease for the station. His father had said, he said, that he, the defendant VO, hadn't done well in the construction business and therefore he wasn't going to give him money for the gas station unless

his name was on the lease.

383) This was fraud and deceit just as much as the story it replaced about the defendant's having the money himself. The father of defendant VO had not made any such representations. This was merely designed to set me up for the extortion that was soon to follow.

384) I,HOAI, asked the defendant VO why he had told me before that he had the money and not that his father had the money and might not give it to him. "You told me many times, I asked you many times, that you had a hundred thousand dollars ($100,000.) on hand," I said to him.

385) I then asked the defendant VO what he was going to do about the bounced check to Sunoco.

386) The defendant VO replied that I,

HOAI, shouldn't worry about it, now, he, the defendant VO, had the money in the bank to cover the check, the check was good. Just tell Sunoco to put the check through again, he said. I told him no, that I could not do that, Sunoco wouldn't let me. You go get a certified check today, he said to the defendant VO, since you have the money in the bank; I must send it to Philadelphia right away. The defendant VO told me to take it easy, that the bank had made a mistake, that the bank would send a letter to Sunoco explaining it.

387) It was after this part of the conversation that I, HOAI, told the defendant VO that I wanted him and the defendant THACH out of my gas station, that he would pay the defendant VO and the defendant THACH every last penny that they

had actually put in the gas station. (At this time I, HOAI, had in the gas station a log book which I and the defendant VO had compiled every day in which they entered the receipts from the previous 24 hours when they added them up in the morning, so he knew how much had been generated by the station itself. Later this book was taken by the defendants after they extorted the station from me.)

388) To this the defendant VO replied: It is not so easy as you think, Mr. Hoai, I will go see my brother.

389) In response I, HOAI, asked: "Who is your brother?"
The defendant VO replied that the defendant THACH was his brother. Defendant VO then left the station.

390) When I, HOAI, had visited and

eaten at the house of the defendant THACH from the 18th of March on, there was usually a bodyguard of THACH's there, trained in the martial arts, named DI. There were also other men around always, some of whom lived there, said to be cousins and other relations.

391) About noontime that same day the defendant VO returned to the station along with the defendant THACH. The defendant VO was in his Chevy van. The defendant THACH was driving a separate 1986 Ford van conversion and had with him in it the man Giang, who was one of the ones who lived in defendant THACH's house.

392) I, HOAI, was standing by the gas pumps. The defendant THACH walked up to me, along with the defendant VO, and said "What's going on ? I heard VO tell me that you want the station back." I, HOAI,

replied: "That's right, I want to get my station back."

393) Defendant THACH said: "We can figure that out for you now. First, if you want to get the gas station back, you have to have two hundred and forty thousand dollars. ($240,000.). I responded, "What two hundred and forty thousand dollars, are you kidding me ?" Defendant THACH then said to me that defendant VO had put about one hundred and forty thousand dollars in inventory in the station, to which I replied: "What hundred and forty thousand dollars in inventory ? You give a bad check for seven thousand dollars and you talk about a hundred and forty thousand dollars in inventory."

394) The defendant THACH then said that I would have to reimburse for VO and pay VO for everything, that VO had paid

over one hundred thousand dollars ($100,000.) to relocate employees to the station from Pennsylvania, from Texas, from New York, to move them and pay to rent homes for them and other expenses and that VO's accountant had everything and he would make a record of it. I replied that it was none of his concern, that he had no agreement to hire any of those people and had never authorized anyone to hire them.

395) By this time I, HOAI, defendant VO and defendant THACH were in the office of the station. The man Giang was in the van. A number of the men of VO and THACH who they were now using as the attempt to try and extort the one hundred thousand dollars ($100,000.), men loyal to VO and THACH, were in the garage of the station.

396) Thach said to me: "Why you say

you give the station to VO and now you lie to us ? We will kill you. VO," he said, "was a pilot-major in the air force; he knows how to take care of people like you. You lie to us, we will kill you."

397) I, HOAI, said: "Go ahead !" He was so angry and upset I was not thinking about the risks. Then these two defendants left. This was around the luncheon hour.

398) Later that afternoon, I was called on the telephone by the defendant THACH, who said that he was calling from the office of the lawyer ARIF, (the defendant ARIF.) The defendant THACH said he wanted me to come to the office of the lawyer defendant ARIF and sign the note for the money allegedly owed to "us," referring to the defendants THACH and VO.

(a) The Defendant Arif

399) About 6 O'clock or so that evening I went to the law offices of the defendant ARIF at the firm of Busman and Busman on Braddock Road in Fairfax County, Virginia.

400) I had been to these offices before and had dealt with defendant ARIF before and had noticed that the defendant ARIF acted in a pattern of tricking people, of double and even greater representation, and conflict of interest.

401) It came about in this way. I had first came across the name of the defendant ARIF in February when I was working on the business of helping to settle disputes between the defendants MINH and LUU and their creditors. At that time I saw the name of the defendant ARIF as attorney for the defendant THACH whom I did not know at that time either. The

papers which I saw at that time showed defendant ARIF as having a different address from the one he had by this time in April.

402) In March on 3 or 4 occasions I had to go to the offices of the defendant ARIF in company with the defendants MINH and LUU. At that time I was currently employed to do business work for the defendants MINH and LUU on the strength of their promises that they were going to obtain and co-sign for me the fifty thousand dollar ($50,000.) loan as aforesaid, as a return favor in other words. In connection with this work for defendants MINH and LUU in March I already had been called several times by the office of defendant ARIF.

403) On one of these occasions in March when I visited the offices of

defendant ARIF with defendants MINH and LUU, I had observed double representation, conflict of interest and attempts at trickery and deceit by the defendant ARIF that led me to believe that I should not trust the defendant ARIF.

404) This was late in the afternoon on March 21, after I had had the meeting that same day with Ernie Peele, the area manager for the Sun Oil Company and the defendant VO at which the defendant V disappeared for several hours before returning with the deposit money for Sunoco. It was about 5:30 PM or so that day when I finally went to the offices of the defendant ARIF, which at that time were at the firm of Busman and Busman on Braddock Road in Fairfax County.

405) My purpose in attending this meeting on this on this day as th

business agent and interpreter for the defendants MINH and LUU as aforesaid. The meeting had been arranged at the offices of the defendant ARIF at the initiative of defendant THACH and the defendant ARIF as the attorney of the defendant THACH, by telephone, in connection with certain negotiations between the defendants MINH and LUU on the one hand and the defendant THACH on the other in which there was a claim by defendant THACH to a commission for an alleged sale of real estate belonging to the defendants MINH and LUU. At this time the defendant ARIF had already represented defendant THACH in other matters and was continuing to represent him.

406) When I and defendants MINH and LUU arrived at the offices of defendant THACH's attorney, the defendant ARIF began

to conduct negotiations between me and the defendants MINH and LUU on the one hand, and the defendant THACH on the other hand. The secretaries had left for the day and no one else was in the office.

407) On this occasion, the defendant ARIF had a note and other papers drafted out ready for the defendants MINH and LUU when they arrived. The defendant ARIF gave copies of these documents to each of the defendant MINH, to me, to the defendant THACH and himself for everybody to read, as he said, before the defendants MINH and LUU signed the documents. During the meeting the defendant ARIF referred to the defendant THACH as THACH, the banker and described him also as the president and owner of the bank.

408) The defendants MINH and LUU are not very proficient in the English

language and do not read it well at all. By comparison, though I read it with difficulty and slowly and do not know many longer or technical words, I am much more proficient in English than they are.

409) When I finished reading the documents being proffered to MINH and LUU I saw that one was a note that they were being asked to sign for a definite amount of thirty-eight thousand dollars ($38,000.) which would be due at the very latest by March of 1987 and which somehow tied up land belonging to the defendants MINH and LUU in Montgomery County, Maryland.

410) Before they arrived at this meeting the defendants MINH and LUU had explained to me that what they thought they were signing was a promise to pay the defendant THACH a commission if a

potential buyer to whom he claimed he had offered it, were to buy a house they owned on River Street in Arlington, Virginia for any price in access of three hundred and sixty thousand dollars ($360,000.). Although the buyer THACH claimed to have was a Malaysian gentleman whom the defendants MINH and LUU knew, by the name of Marznki Kamagi, and to whom they had in fact sold their ill-fated Mekong Restaurant in the Tyson's Corner shopping center, defendant THACH claimed that he was owed a commission of everything over this amount because the defendants MINH and LUU had promised him that if he found a buyer and they had not approached the man Kamagi even though they knew him and had dealt with him.

411) Now defendant THACH is not and never has been licensed to sell real

estate. The man Kamagi whom the defendant THACH was holding up to the defendants MINH and LUU as a purchaser had not paid any money down to the defendants MINH and LUU and, as part of the deal, was trying to move into the house on River Street in Arlington before any money was paid out to the defendants MINH and LUU. The only prospect of money was the fraudulent promise of the defendant THACH as the fraudulently represented owner and president of the McLean Bank to obtain a loan for the purchaser Kamagi for the full three hundred and ninety-eight thousand dollar ($398,000.) purchase price of the house. All of this was a fraud concocted by the defendants THACH and ARIF to deceive defendants MINH and LUU and get them in the power of the defendant THACH. Both defendants THACH and ARIF knew that

THACH was not the president and owner of the McLean Bank and had no power and no intention of making or obtaining any such loan and it was all designed to induce the defendants MINH and LUU to rely upon it to their harm and detriment which they did.

412) On this occasion, I was able to see that the note was a very dangerous one for the defendants MINH and LUU to sign in that it was far more than a contingent promise to pay the defendant THACH a commission if the man Kamagi actually purchased the house from the defendants MINH and LUU. In fact the note, a copy of which was later attached to a counterclaim filed in a suit by defendant THACH against the defendants MINH and LUU over these and other matters was a deed of trust note which tied up certain land of the

defendants MINH and LUU in Montgomery County, Maryland, and assured defendant THACH of virtual control of that land. I, HOAI, after reading the deed of trust note on this occasion, advised the defendants MINH and LUU not to sign it. I further explained to them that there was no assurance that they would ever get any money if they signed the note.

413) After I had advised this to defendants MINH and LUU, the defendant ARIF, without advising them in any way that he was in fact the attorney for the defendant THACH and that they maybe needed an attorney of their own, advised the defendants MINH and LUU that THACH was the banker and that THACH was just advising them to sign the note in order that he could get the money for the buyer Kamagi to buy their house so that they could get

their three hundred and sixty thousand dollars ($360,000.). Against my personal advice acting as their translator and (then) friend and business advisor, the defendants MINH and LUU signed the note.

414) On this occasion the defendant ARIF falsely and fraudulently told the defendants MINH and LUU that he was their lawyer when he was not and that THACH was their banker, which he was not. Later the defendant ARIF sent a bill by mail to the defendants MINH and LUU for his services on that occasion for over a thousand dollars ($1,000.)

415) Because of these and other things, I knew of the habits of fraud and deceit of the defendant ARIF and of the pattern of fraud using telephones and mail that defendant ARIF would engage in. So on April 26th, 1986, when invited to the

offices of defendant ARIF, I was on my guard.

416) On that day of the 26th of April, when I arrived at the offices of the defendant ARIF about 5:30 or 6:00 PM I saw the defendants VO and THACH there with the defendant ARIF. Again, as at that earlier meeting with the defendants MINH and LUU, there were no secretaries or other personnel present. It was later, according to my best information and belief, that the defendant was asked to leave the firm of Busman and Busman for activities in pattern with those complained of here.

417) On this occasion I refused to shake hands with the defendant ARIF. When I had done this, the defendant THACH said to me, speaking all this time in English and not Vietnamese, that now we will

straighten it out about the gas station. We will work together to locate the money to put in the gas station. Vo has no money the defendant THACH explained, but if HOAI would sign a contract selling the gas station "business" to the defendant VO for one dollar, then he, the defendant THACH would go to "his" bank (meaning the McLean Bank which he had previously held himself out as the president and owner of,) and get the money the gas station needed, maybe two, three, four hundred thousand dollars ($200,000.; $300,000.; $400,000.).

418) I replied to this by asking to see the contract. The contract was handed to me by the defendant ARIF who had on his desk. It was drawn on the stationery of the defendant ARIF and, as with the earlier note for MINH and LUU, had been

prepared by the defendant ARIF, in several copies. Defendant ARIF gave a copy each to the defendants VO and THACH, himself and to me.

419) When I first saw the contract I saw that it was a proposal for me to sell the "business" of the gas station including my lease with Sunoco, my franchise with Sunoco, all my statements to and agreements with Sunoco, my receipts from Sunoco, my insurance certificate, my sales tax exemption certificate, my UCC financing statement, in short all of the documents of my ownership in the franchise and lease, all for one dollar. Although I am not a lawyer, I know this was a) an attempt at an unconscionable bargain following the threats of death against me and b) that I could not sell all of these documents that were in my name without the

permission of Sunoco and the other parties who had given them to me.

420) I said simply, after reading the proposed contract to sell my business for one dollar: "I'm not going to sign it." I also informed these defendants at that time that without Sun Oil Company's permission I could not sign such an agreement in any case.

421) At this time the defendant ARIF said that, yes, he had read the Sunoco franchise agreement, and that was right I was not able to sign such an agreement without the permission of the Sun Oil Company.

422) When the defendants VO and THACH heard this, they said that it was just between the parties present and Sunoco did not need to know about it.

423) Then I said: "Well, I cannot

sign this." And I left.

424) On the next day, the 27th, I arose to go to the gas station early in the morning about 7 AM. There I saw the defendant VO. The defendant VO asked me at this time if I knew that the McLean Bank had sent a letter to Sunoco explaining that they had made a mistake and that the lack of funds in the account was their error. I responded that I did not know that but that I was upset with the defendant VO.

425) In fact, I was so upset by these events of past 48 hours, that I left the station and went to the Mekong Center food store.

426) From the Mekong Center food store, I called John Pendergast of the Sunoco credit department in Philadelphia and asked him if had received the letter

from the bank apologizing for the overdraft and saying that it was the bank's error. John Pendergast told me that he had not received the letter yet but that it made no difference, letter or no, I would have to pay by cashier's or certified check for one month.

427) While I remained at the Mekong Center food store that morning the defendant VO called me there on the telephone, saying that the defendant THACH wanted to see them both. I responded sharply: "See me for what ?" The defendant VO said he (the defendant THACH) wants to help us to have some kind of money. For the prospect of getting the money, I said I would come. Defendant VO then told me that the defendant THACH wanted to meet them both at his house that night.

428) I said: "If he (the defendant THACH) has some kind of money, I come." The conversation ended.

429) That afternoon early, just after lunchtime, the defendant THACH called me at the Mekong Center. The defendant THACH when he called on this occasion was very apologetic to me and he particularly apologized for the way he had acted with defendant VO toward me the previous day. "We are the brothers," he said, "Why we hurt each other ?" The defendant THACH then said: "I want to invite you and VO to come to my house this evening to eat dinner with us. I want to help both of you to have some kind of money." (translation into English). I said: "What kind of money you talking about." (translation). The defendant THACH then said that he was talking about money to

help me and the defendant VO for the gas station. I then told the defendant THACH that I would come that evening about 10 or 10:30 O'clock PM. I called my wife at this time and she was afraid and warned me not to go to the meeting because she was afraid since I had told her about the death threats of two days before. I decided to go anyway.

430) That evening I went to the home of the defendant THACH in Springfield, Virginia, at the above address.
When I arrived there the defendants THACH and VO were there along with DI, the defendant THACH's bodyguard, the man Giang who had been at the gas station two days before when they threatened me with death and another man whom I did not know but who was introduced to me at this time as the brother of the Four Star General

Khiem. This last man introduced himself to me very cordially.

431) Immediately after the cordial introduction with the man who was introduced as the brother of Four Star General Khiem, the parties sat at the dining room table. The defendant THACH produced a copy of the same contract which they had produced at the office of the defendant ARIF the day before. At this time the contract was still on the letterhead and stationery of the defendant ARIF. 432) At this time the defendant THACH started talking about how he, the defendant THACH was "strong" and the defendant VO was strong and how I was also "strong" and how all we "strong" Vietnamese need to work together and everybody will be strong. The defendant THACH stated that there was no reason why

only the Italian mafia should be strong but that the Vietnamese should be strong also and that there was no reason why I should not join in with them and we could all make money together.

433) The defendant THACH explained to me that since he, the defendant THACH, was president of the bank, I could not get the money for the gas station out of the bank or from anywhere else without his, THACH's approval and help. This is the opportunity to get the money out, the defendant THACH explained to me and he demanded to know why I was holding up the opportunity.

434) At this time I told the defendant THACH in front of the others: "I told you yesterday that I will not sign the contract. Sunoco will not allow me to sign the contract." The defendant THACH at

this time told a fraudulent tale of woe about the defendant VO who was sitting there but who said almost nothing during the exchange of words that followed. The defendant THACH said to me in front of the others at this time: "Why do you lie to us Mr. Hoai, you promised to give the station to VO as a gift." (this whole conversation was in Vietnamese) To this I replied in disbelief: "What gift ? I am not crazy to give away a hundred and thirty-nine thousand dollar ($139,000.) gas station free." The defendant THACH said: "You lie to us, you lie to us, motherfucker." At this point the defendant THACH accused me of "destroying the family of the defendant VO" by lying and not giving the gas station to the defendant VO. This tactic was so ludicrous it almost made me laugh even though I was scared. I said

that the defendant VO's home life was his concern and that I had nothing to do with any divorce between VO and his wife. They put the money in, the defendant THACH replied, and now you not give them the gas station. I replied that he did not know about any putting the money in, all I knew about was that defendant VO had agreed to loan me thirty-five thousand dollars ($35,000.) out of one hundred thousand dollars ($100,000.) which the defendant VO had insisted many times that he had on hand.

435) To this the defendant THACH again said: "You lie to us." He told me "We have enough money to burn your life. (translation into English) "We have enough money to kill you." I replied: "Well, go ahead." The defendant THACH said: "It won't be on my hands. You could have an

accident. I do not need to use my own hands to kill you any time. Someone will do that for me. If we kill you we have many different ways. The law cannot get anything on us." I said: "Go ahead." And he got up and left. No one said a thing. No one rose. All sat and laughed hysterically as he let himself out the door. During the entire conversation the defendant VO sat there with a funny smile on his face, agreeing and smiling and grinning at everything the defendant THACH said. From the beginning of this encounter the defendant THACH had been plying everyone with expensive drinks such as V O whisky, Hennessy Cognac and other expensive brands.

436) Previously, on one of my visits to the house of the defendant THACH one evening, before I was notified by John

88-765(7)

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL
CLERK

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

APPENDIX II (Supplemental) PART E

Laurence A. Elgin *
John D. HEMENWAY
4816 Rodman St., N.W.
Washington, D.C. 20016

*Counsel of Record

CONTENTS OF THIS VOLUME OF APPENDIX II

(Supplemental) APPENDIX II

PART E

Partial text of the Sworn Affidavit of PLAINTIFF/PETITIONER THANH VONG HOAI of March 25, 1987.

Paragraphs 437) through 522) pp 287-350

(Remainder of Affidavit in previous or subsequent parts.)

Pendergast that the check to Sunoco for gasoline had been returned, about the same time that the defendant THACH informed me that the defendants MINH and LUU had instructed him not to get loan application for me for the Mekong Center food store loan, the defendant THACH had told me, which I didn't quite understand at the time about how "strong" a person he, the defendant THACH, was and about how he knew how to handle the people and get his way, and about how he had held a gun to the head of Tuyen Giang, the owner-editor of the Vietnamese language advertising newspaper, the Vietnamese Washington Post and how that gentleman had gotten down on his knees and begged for his life.

437) That night, of the 27th, I told my wife what had happened and she was frightened and told me that we needed to

see a lawyer. I replied that to see a lawyer it would cost us two thousand dollars and that the defendants had taken all our money and we had none left. My wife begged me not to go back to the gas station and the homes of the defendants THACH or VO.

438) The next day I went to the Mekong Center food store with my wife. About 11:30 AM that morning the defendants VO and THACH came to the Mekong Center food store where my wife and I were together. The defendants THACH and VO approached, all smiles, and the defendant THACH said that they wanted to invite me upstairs to go to eat with them. My wife was frightened in light of the events of recent days and she said that she did not want me to go with these two defendants. The defendant THACH replied with a smile

that they just wanted to take me up to the restaurant on the second floor to eat with them and that I would not leave the building and that they would bring me back.

439) I said I wanted to go with them because I felt that they probably would not try to harm me in the Mekong Center building. My wife said she did not want me to go but that if I wanted to go she would not stop him.

440) I went upstairs to the restaurant of the Mekong Center on the second floor and sat down with these two defendants. At that time the defendant THACH told me that he, the defendant THACH, wanted to help me and my wife with the Mekong Center. I asked the defendant THACH, "What do you mean help ?" The defendant THACH said I want to help you

and your wife with your wife's store, the Mekong Center food market. I want to help you get the lease from our uncle and aunt (referring to the defendants MINH and LUU). The defendant THACH went on for quite a while in this vein, with me saying very little since I did not believe THACH any more.

441) After a while I asked the defendant THACH what he meant by saying he wanted to help me and my wife get the lease. "How you can help me get the lease ?" I asked. (translating into English.)

442) The defendant THACH explained that the defendants MINH and LUU were "in trouble" with the American Service Center where he had helped them buy a Mercedes but they had bounced a check to pay for their Mercedes and they were not threatened with being sent to jail.

443) In reality, this was another fraud and deception engineered by the defendant THACH, I now have it on information and belief, to make the defendants MINH and LUU vulnerable to himself, but at that time I did not know this.

444) The defendant THACH explained to me that defendants MINH and LUU had given the American Service Center a bad check in the amount of fifteen thousand dollars ($15,000.) and now was my opportunity to take advantage of the situation to get the lease. "Our uncle and auntie have a big problem," the defendant THACH said.

445) I said, "It is not my business. You helped them buy that car (speaking to defendant THACH); why didn't you help them with the money ?" "Well," said the defendant THACH, "that's the problem they

have now. If you want the lease now, you give them the money and they will have to give you the lease." "They (speaking of the defendants MINH and LUU) cannot get the money without me," the defendant THACH said.

446) I explained that I did not have the money to give them fifteen thousand dollars ($15,000.) because all of my money was tied up in the stock of the food store. The defendant THACH said that he knew that but that I should get the money from the defendant VO because the deffendant VO had the money. To this I replied with disbelief, almost laughing. Wait a minute, I said, you told me that VO had no money, that I could not get blood from the stone. How come you are telling me now that VO has the money.

447) To this the defendant THACH

replied: "I will help him to have the money. Listen to me, Mr. Hoai." Now you will get the money to pay MINH and LUU, he said, we have to get the lease. Defendant THACH explained to me that this was my one opportunity to get the lease, that if I did not get it now I never would get it. I said that I did not believe it, that eventually I would get the lease one way or another. No, said the defendant THACH, this is your one opportunity. Come to my house tonight, he said, and we will discuss in detail how to get the lease. I responded to this invitation by saying: "Let me talk to my wife. If she says no I will not come. If I don't come I will not call. If I do come, I will call you about the time.

448) By this time I and the defendants THACH and VO were finished

eating and I noticed for the first time that there were unusual numbers of the defendant "cowboys" in the restaurant that day, 4 or 5 tables full, whereas on most days there were only about 2 tables full. In fact, there were so many cowboys in the restaurant that there was no one else other than the defendants THACH and VO and the 4 or 5 tables of the defendant "cowboys." These "cowboys" are young male ethnic Vietnamese ranging in age from the late teens up to the late thirties in age, who hang around, and are used by the defrauders and extorters of the Vietnamese community, such as the defendants THACH, VO, MINH and LUU as their "street muscle" in their pattern of racketeering activity. Some of these cowboys, such as the man Hai Den, were known to me because of their propensity and reputation for intimidating

people and beating them up and I knew of their reputation for violence and for roughing people up and strong-arming them.

449) At this time the defendant THACH said, as he looked out at the cowboys whom I was obviously noticing: "Let me show you how I know people," he said, "I can get them to do what I want. These 'cowboys' have killed many people; they can do with them whatever they want. If you need to kill someone, just tell me and they will kill them." I replied that I did not need to kill anyone, I hadn't done anything. Defendant THACH then said: "Later on, you never know." Then the defendant THACH made a big point of going, in front of me, and shaking hands and exchanging friendly greetings with many of the "cowboys" who were sitting at the tables.

450) After this deliberate intimidation, I returned to my wife to tell her what had happened. She begged me not to go to the house of the defendant THACH again. This time I obeyed my wife's wishes and did not go or even call the defendant THACH again that day.

451) The next day I went with my wife to the Mekong Center food store early in the morning. About 9 AM or so that morning, April 29, 1986, the defendants THACH and VO showed up at the Mekong Center and told me and myh wife, all smiles, that defendants MINH and LUU will sign a lease for me and my wife if I and my wife have the money to pay the defendants MINH and LUU the fifteen thousand dollars ($15,000.) to pay off for the defendants MINH and LUU the bounced check which they had given to the American

Service Center for the Mercedes.

452) The defendant THACH then said that he and the defendant VO had no more time to talk about it that morning but that he, the defendant THACH, wanted me to come again to his house that evening late to work out the details of the lease that he would help me get from the defendants MINH and LUU. I asked how late that evening and the defendant THACH said about 10 or 11 PM. I then said I would come at 11 PM.

453) Against the advice of my wife, I went to the house of defendant THACH that evening at the appointed hour. When I arrived the defendants THACH and VO were at the former's house, along with the same Mr. Giang who had been there at the previous meeting.

454) I was greeted cordially on this

occasion and got right down to business drafting out a lease for the Mekong Center food store. In the lease, which a number of people saw and read over the next few days, I wrote in the following features: 1) 15 months with a five year option in accord with the master lease; 2) lease to be in the name of plaintiff's wife; 3) rent to be two thousand dollars ($2,000.) a month; 4) name to be changed to Solar Food Market; 5) No liability for prior debts of business or MINH and LUU; 6) new corporation belonging to me and my family; 7) business license to be in my name and owned by me 8) MINH and LUU to pay the utilities and for trash removal; 9) I to pay for telephone equipment and service.

455) After I drafted this lease and signed it, defendant THACH took it and said that it was a good lease but the only

thing is that it is written in English and that he knew that the defendants MINH and LUU would never sign a lease written in English. responded, well, let them object and we'll put it in both languages. Then the defendant THACH took the lease and said that he would get the defendants MINH and LUU to sign it and he would get the fifteen thousand dollars ($15,000.) for VO to give to me to give to MINH after MINH and LUU signed the lease. This was the help that defendants VO and THACH said they would give me and my wife as I understood it at the time.

456) After the threats against my life were made to me at the gas station on the 26th of April as alleged above, I noticed a definite change in the way I was treated by the personnel manning the gas station, all of whom by that time were the

individuals brought in by defendants VO and THACH. On all but a few of the days from the 26th of April up through the next several weeks, I went to the station but it became clear to me that the employees had been instructed not to do anything I asked them to do or talk to me because they did in fact refuse to do anything I said and refused to talk to me on the whole. The defendant VO had taken over my chair and desk in a way that all would notice and very visibly was supplanting me as if he, VO, were in truth me and the franchisee and lessee of the station.

457) I decided to try and get the situation straightened out with my wife's business at the Mekong Center if I could and then find out what I could do about the attempts to extort the station franchise from me. At this time I still

believed the fraud of the defendant THACH that the latter was the owner and president of the McLean Bank and therefore offered the most logical way out of the increasingly difficult situation in which my wife and I found ourselves.

458) The next day after the meeting at the house of defendant THACH on the evening of the 29th at which I drew up a draft of a lease for the Mekong Center on his own, on April the 30th, I went to the Mekong Center food store with my wife. That morning, at about 9:30 or 10 AM, the defendants THACH and VO came to the Mekong Center food store and invited me to have breakfast with them upstairs in the restaurant of the Mekong Center. In the meantime I had told my wife about what had happened the night before and she had told me that if I thought that the defendants

VO and THACH really meant to help us in this way that I should go ahead and deal with them.

459) I went upstairs with these two defendants to eat at the restaurant. At the breakfast the defendant THACH did the talking and acted very kindly, saying he wanted to do what was best for me and the defendant VO and wanted to us cooperate and be friends again. The defendant THACH said he would provide the money for me and the defendant VO to work it out together because he wanted to see us both have good businesses. The defendant THACH insisted that it be straightened out between me and defendant VO and that past bitternesses be forgotten. This was another fraud and deceit designed to force me, by a combination of deceit and the threats that had been applied over the

recent days, to act as if he had somehow been in the wrong when in reality the defendants VO and THACH had schemed together all along to defraud and extort my businesses from me.

460) The defendant THACH then again asked me to come to his house that evening and I said I would come around 10:30 or 11 PM. Defendant VO then said he would come there about that time as well.

461) I went to the house of the defendant THACH that evening around almost 11 PM. The defendant THACH was there alone, though his wife was somewhere in the back as usual. The defendant VO was not there when I arrived. The defendant THACH asked me to sit down. He then addressed me in very fatherly tones, saying that he did not want to see me and the defendant VO fighting any more and he

wanted each to have his own business interests.

462) The defendant THACH said that he had discussed these matters with the defendant VO earlier in the day and that the defendant VO had agreed to lend to me thirty thousand dollars ($30,000.), with fifteen thousand dollars ($15,000.) to be paid to the defendants MINH and LUU to enable me to secure the lease from them for the Mekong Center and another fifteen thousand dollars ($15,000.) to be used by my wife in the Mekong Center to obtain additional stock and otherwise make that business grow. The defendant THACH said that he wanted me to allow the defendant VO to be the "operating manager" of the station until I could repay the loan from defendant VO and that if in the meantime the defendant VO, while he was thus

operating the station, would violate any laws or any Sunoco rules that resulted in the franchise being suspended or removed in any way then I would not have to pay back the thirty-thousand dollars ($30,000.) loan from the defendant VO. Letting the defendant VO do this, the defendant THACH explained, would make the gas station management in effect "security" for the loan.

463) About 11:30 PM or so, or about a half hour after I had arrived, the defendant VO showed up at the house of the defendant THACH. I now believe this to have been a prearranged plan under which the defendant THACH was going to act reasonable and convince me of what sounded like a reasonable plan, then the defendant VO would show up and things would get a little tougher.

464) When the defendant VO showed up he asked how everything was going and the defendant THACH said that everything was straightened out and that I had agreed with what defendant THACH had suggested. The defendant THACH then dictated to me a note for thirty thousand dollars ($30,000.) which, at the defendant THACH's request, I wrote down in Vietnamese as the defendant THACH dictated. In it the defendant THACH changed one key provision by virtue of an ambiguity in the Vietnamese language. Instead of me getting the gas station back when I paid back the thirty thousand dollars ($30,000.), the defendant THACH tried to write it so that when the defendant VO decided to return the gas station, I would pay him back the thirty thousand dollars ($30,000.). This last was a deceit and a

fraud designed to make it so that the defendant VO could hold on to the gas station indefinitely. For whereas the defendant THACH had told me that I would be able to get back the station by removing defendant VO as "operations manager" when I paid back the money, he dictated the note to mean, as he wished it interpreted, that I would "transfer" the station to the defendant VO and when the defendant VO, if ever, decided to give up the station back to me then I would have to pay back the money loaned. But then he dictated into the note, after this passage, a thirty day payback provision that would require me, absent ambiguities, to pay back in thirty days all the money so that, in the design of the defendant THACH, I would have to pay back all the money in thirty days but would have no

authority to demand back the management or any other interest in my gas station. This was a fraud and a deceit fraudulently induced in which deliberate misrepresentations were made to induce me to rely upon them and I relied upon them to my detriment.

465) After the note was dictated by the defendant THACH and written down by myself, the defendants THACH and VO said that the note as written down by me was not very clear or clean and they asked me to write out a clearer and cleaner version of the note, which I did. After this second draft of the note was written out by me, the defendant VO read it and said it was all right with him and he signed it. Defendant THACH read it and said he was satisfied with it. Then I read it, and though I found it confusing, signed

it. The draftsman THACH signed as a witness.

466) Throughout the conversation of that evening at the house of Thach, the defendant THACH stated on several occasions that he was the banker and that he was arranging for the money from his bank (that he owned and was president of) the McLean Bank that would be loaned to the defendant VO to loan to me in turn. The defendant THACH represented that he was a sort of neutral stakeholder that would monitor myself and defendant VO and arbitrate any differences between them and would see that if either party got out of line and violated the agreement the violator would have to pay the other party. Once the note was signed the defendant THACH then played this pretense out further by announcing that he, as the

neutral banker, would hold the only copy of the note and would see that no one else had a copy. He ordered me to take the original draft he had made, the one that these two defendants had rejected as being too dirty and unclean, and throw it away. Later, after the ensuing fraud about not giving the promised money, I retrieved it from the trashcan unseen as a precautionary measure against further fraud and deceit. Now this business about being the banker and a neutral stakeholder and arbitrator was a fraud and a deceit. It was a deliberate misrepresentation designed to induce me to rely upon it to his harm and detriment which I did.

467) After the note was signed and the defendant THACH had put on his phony show about being the banker and therefore the neutral arbitrator and stakeholder, I

asked where the thirty thousand dollars ($30,000.) was for which the note was made. The two defendants acted very taken aback and looked at each other and put on an act. The defendant THACH then said that it was too late at night, that the banks were closed, that he had personally spoken to three loan officers at his bank, the McLean Bank, and arranged for the loan of the thirty thousand dollars ($30,000.) and that he would personally come in the morning and pick me up at the Mekong Center between 9 and 9:30 AM the next morning and take me to the bank and get the money out for me.

468) When this was said I said, no, wait a minute, I want money now. That was what I was promised. The defendant THACH then said: "Wait until tomorrow morning." I responded, then give me back the note

until tomorrow morning and in the meantime I will make a Xerox copy. This is when the defendant THACH acted very indignant and said that he would not give the note back, that he was the holder of the note and that none but he would have a copy. I then retrieved the duplicate first draft of the note from the trash can and the meeting broke up on an unfriendly note. I left in a hurry without comment.

469) The next morning, the morning of May 1, 1986, I waited at the Mekong Center food store for the defendant THACH but he never came. Shortly after 11 AM I grew tired of waiting and drove to the gas station. When I arrived at the gas station the defendant VO was not there. I waited at the gas station. Around 5 O'Clock the defendant VO showed up. I asked the defendant VO: "Where's the

thirty thousand dollars ($30,000.)?" The defendant VO said: "Thach's got it, Thach's got it." I responded that the defendant VO always said it was THACH and THACH always said it was VO, but he was tired of a runaround and he wanted his thirty thousand dollars ($30,000.) now. The defendant said: "I already told you that THACH has your thirty thousand dollars and he is getting the money out. That's all I can say." I told defendant VO that both he and THACH were lying to me.

470) I then returned to the Mekong Center and called the defendant THACH on the phone at home and asked where his thirty thousand dollars was. The defendant THACH then answered that the bank had not approved the loan for the defendant VO.

471) To this I replied, "What do you mean the bank didn't approve the loan, you're the president of the bank and you told me that three different loan officers had approved the loan already as of last night and the money was already in VO's account and now you tell me that the bank has not approved it. What do you mean ?"

472) The defendant THACH then replied that well that he was only reporting what the bank had reported to him as the president and that the bank staff had reported that VO did not have the papers necessary for the loan. I responded by asking the defendant THACH what papers were necessary that the defendant VO did not have. The defendant THACH replied that the bank wanted the loan secured by the gas station and that I had to sign the contract proposed by the defendant ARIF

under which I would sell the business of the gas station to the defendant VO for one dollar before the bank would make the loan to the defendant VO so he could in turn loan it to me.

473) To this I responded by repeating that I had told the defendant THACH that I could not and would not sign any contract selling the gas station for one dollar.

474) At this point I became exasperated and lost my temper and, for the first time, I began cursing at the defendant THACH over the telephone. After I had cursed at the defendant THACH, the defendant THACH said to me: "Mr. Hoai, your head is on my hand." (English translation). This is a literal translation of a well known Vietnamese expression that indicates that the person using it has total control over the life

of the person addressed, including, if necessary, the power to either kill that person or save that person's life by a favor.

475) I demanded the thirty thousand dollar note back and said I wanted the gas station back under my control and then hung up.

476) Around 10 PM that evening the defendant VO called me at home and told me that the money was already in the bank, thirty thousand dollars ($30,000.) and that on the next day he, the defendant THACH and I would get together and get it out. I said that if the defendant VO had thirty thousand dollars that would be fine, he would get it tomorrow. The conversation was ended.

477) After 11 PM the defendant THACH called plaintiff at home and said, in

English: "Mr. Hoai, spot news." I asked what he meant by "spot news." The defendant THACH then said that he understood that the defendant VO had earlier called me and told me that the money was in the bank. Defendant THACH then said that that report from VO was not right. "The bank just called me ten minutes ago, Mr. Hoai," he said, "telling me that beginning tomorrow the bank cannot approve any loan over fifteen thousand dollars ($15,000.)." 478) I replied: "Mr. THACH, are you kidding me ? I'm not a kid, no bank can be open at 11 O'Clock at night."

479) To this the defendant replied: "I am the owner of the bank. They have to report to me and tell me any change, any news, reporting to me everything at any hour, whether it is 11 O'Clock, 12

O'Clock, 1 O'Clock, whatever. If you don't believe me, come here and I will show you the computer printout."

480) I said: "I don't believe you any more. Just give me the thirty thousand dollar note and tell me VO get out of the gas station tomorrow." At this point the defendant THACH said: "We are not playing with you. You have to listen to us and looking at your family, your wife, your four children, they need you." To this I replied: "Of course, they need me and I love them." The defendant THACH then said: "So listen to me, you have to sign the one dollar sale contract to VO and get fifteen thousand dollars to pay MINH and get the lease." At this point I said: "I do not sign it and I want the thirty thousand dollar note back and I want the gas station back from VO." Then I hung

up.

481) My wife had listened to these conversations with the defendants VO and THACH on the evening of May 1, 1986, on another extension. She told me after I hung up on the defendant THACH: "He will call back." Fifteen minutes or so later the defendant THACH called back.

482) "Well, I call VO," the defendant THACH said, and VO agreed to come here tomorrow, and I want you to come here tomorrow and we'll straighten it out." I asked him what he meant by "straighten it out." The defendant THACH replied: "We'll do something; We'll figure it out tomorrow. You come to my house about 9 or 9:30 in the morning." I replied that if the defendant VO would come I would also. That was the end of the conversation

483) The next morning, of May 2,

1986, about 9:15 AM or so in the morning, I arrived at the house of the defendant THACH. As I drove up I saw the van of the defendant VO with the defendant VO inside at the steering wheel and the defendant THACH was standing by the door of VO's van on the driver's side with that door open and talking to the defendant VO.

484) I parked my car on the street in front of the house, got out and walked up to the two defendants, saying "good morning" in English. The two defendants answered in English also: "Good morning, Mr. Hoai." The ensuing conversation was all in Vietnamese. As I approached up the driveway to the van of the defendant VO on the driver's side, defendant THACH said: "Hurry up, drive Mr. Hoai to the bank immediately." The defendant VO abruptly moved across the front seat of the van,

flung open the door and grabbed me by the wrist and yanked me into the front seat of the van, moving back toward the driver's side as he did so. The defendant THACH meanwhile, quickly moved around and shut the door of the van on the driver's side forcefully as I was yanked into the vehicle. As he did this, the defendant THACH said to the defendant VO: "Drive immediately to the bank I will follow you."

485) The defendant VO drove out of the driveway, driving fast, and immediately he said to me: "Brother Hoai, you have to listen to what the brother THACH said to you last night." I said: "What is it that brother THACH said to me last night." The defendant VO said: "You know, Mr. Hoai, I don't have to tell you, but only one thing: Your wife may have to

suffer and you have a very nice family as I have." At this point I became very nervous. I was overcome with how much my family meant to me and I was afraid that I was in the van alone with VO and the defendant THACH was not there but was following. I recalled that the defendant THACH had emphasized to me in the preceding days that he would not kill him, if he decided to, with his own hands, but would have somebody else do it. I recalled that when the defendant THACH told me the story of holding the gun to the head of the newspaper editor, Tuyen Giang, and making him beg for his life, he also told me about how he, THACH, had ordered the deaths of the customers, 4 or 5 in number, who were shot down in cold blood in the shootout by "cowboys" at the French-Vietnamese restaurant, The Bistro,

on Wilson Boulevard, in 1983 or 1984.

486) I knew I was going to have to give in to save my family from harm and I said: "Tell me what is it you want ?" The defendant VO replied: "There's only one thing I want you to do for me and that is sign the one dollar contract." "I already told you," I said, "I cannot sign that contract because Sunoco will not permit me to sign that contract. I've already told you, and THACH, and ARIF the lawyer, I cannot sign because Sunoco does not permit me to sign."

487) The defendant VO then abruptly rolled down the window on his side of the van and stuck his arm out the window and waved a fist in the air. "Brother Hoai, I swear to the gods if I show this contract to the Sunoco and let the Sunoco know about it, I will be killed in an accident;

my wife will be killed; my son will be killed." There was a pause, then the defendant VO said: "After you sign the contract, you will get the money and we will take you to MINH and we will get the lease for you right away."

488) I was feeling that I was in very grave danger. The defendant VO had become to me a very frightening man, since the threats had begun, and even from the time that I first began to see VO and THACH together, other members of the Vietnamese community had been telling me of the defendant VO as a man who was known for violence and for having been involved in violent criminal acts and I had been told several times that the defendant VO had gotten worse in this regard after VO had started hanging around with THACH. I knew that VO and THACH had seized control of

the gas station anyway as a practical matter and I believed that I had better not provoke any more of these threats against myself and particularly my family if we were to get through this ordeal in one piece. I believed that if he could get the Mekong Center secured I could someday fight back and I believed that it was a principle of the American laws that a contract signed under threats of death and bodily harm such as I had now been receiving for days, could be overturned if I could once get in the clear financially and afford to fight the injustice I now knew was being done to me. I did not realize that my tormentors knew they now had me grasping at straws which they intended to yank away from me. I still believed at this point that the defendant THACH was, as he had always said, the

owner and president of the McLean Bank, and I believed that bank presidents could be held to some accountability for such actions in a country like the United States if only I could get a little room and a little money to fight with.

489) Soon they came to the McLean Bank headquarters. The defendant VO parked the van in the parking lot and got out. I got out on my side and followed the defendant VO into the bank. The defendant THACH was nowhere to be seen. The receptionist greeted the defendant VO by name as they came into the lobby. "Good morning, Mr. VO," she said. The defendant VO led me straightaway to an American lady about 25 to 30 years old. The plaintiff VO said that this lady was a notary and he asked me to sign the contract in front of her. At this time

the contract was the same as it had been ever since it was first shown to me at the offices of the defendant ARIF in the law offices of the firm of Busman and Busman, but it no longer was on the letterhead of the defendant ARIF as a member of that firm. Still afraid for myself and my family, I signed the contract, thinking still that if I could get the Mekong Center food store free and clear, I could do something about it later. After I signed, the lady asked me for my driver's license. I showed the lady my driver's license. The lady said, in English: "That's it." I did not later remember seeing the lady enter in a notary book as notaries usually do, the name of the document. Although the contract recited that the defendant VO was giving me one dollar ($1.) neither the defendant VO nor

anyone else ever gave me the one dollar and, on legal advice, months later, I while contesting the legality and validity of the contract in any case, formally rescinded it for the failure to deliver the one dollar as recited.

490) After I signed the one dollar contract under this duress, I followed the defendant VO to the second floor of the bank. Still there was no sign of the defendant THACH. On the second floor the defendant VO led me to an office and went in. Inside the office a man was sitting at a desk. On the desk there was a name plate. As near as I can now recall (He was at this time extremely agitated) the name plate said: "Mr. Kevin." The defendant VO then said in English: "Mr. Kevin is a loan officer." He introduced me to Mr. Kevin who asked me to have a

seat. Mr. Kevin already had on his desk a file folder, closed. He pulled the file to him and then said: "Here's your file and your loan has already been approved." Mr. Kevin then mentioned a figure of seventy-five thousand dollars ($75,000.). The defendant VO said: "I don't need seventy-five thousand dollars ($75,000.), I only need fifteen thousand dollars ($15,000). Mr. Kevin said: "Whatever you need." There was still no sign of the defendant THACH.

491) This was about 10:00 or so in the morning of May 2, 1986. The man whom I remember as Mr. Kevin then said to the defendant VO: "Your money will be in your account about 3 O'Clock. I will put it in your account. Come back around 3. The money will be there." or words to that effect.

492) This made me very angry again, both because the defendant VO had again broken his word in asking for only fifteen thousand dollars ($15,000.) instead of the promised thirty thousand dollars ($30,000.) and because the bank loan officer whom he remembers as Mr. Kevin had offered seventy-five thousand dollars ($75,000.) which clearly meant that the statement to him on the telephone a few nights before by the defendant THACH about a fifteen thousand dollar ($15,000.) loan limit had been a lie. But I believed I was trapped and threatened to the point where there was nothing I could say without risking my physical safety and that of my family.

493) We left the office and went to the elevator to go to the first floor. When we got on the elevator there was a

man on the elevator, an older American man, somewhere between the later forties and early sixties in age (It is hard for the plaintiff to tell.) When this man saw VO, he asked: "Did somebody take good care of you ?" The defendant VO said: "It was perfect. Thank you, sir." Then the defendant VO said to me in the Vietnamese language: "This is THACH's father-sponsor," and said the man's name, but I do not now remember this man's name. We left the bank. I was still very afraid and I was afraid to ask about the other fifteen thousand dollars ($15,000.) I was supposed to get.

494) The defendant VO drove me back to the defendant THACH's house. The defendant VO was listening to the radio and acting very happy. I was afraid and withdrawn. When I got to my car I drove

to the Mekong Center food store and told my wife the sad story of what had happened.

495) Around just after 11 AM the defendants THACH and VO both showed up at the Mekong Center food store, laughing at me. I was to control myself and, despite my fear, grew very angry. I demanded from the defendants that they return the thirty thousand dollar note since they had not given me thirty thousand dollars and that they return the gas station to me which they had taken by threats of force. My wife grew afraid and tried to stop me from shouting at the defendants THACH and VO, with whom, at this time, I almost came to blows. I said to the people in the neighboring shops in the Mekong Center: "They lied to me, they have tricked me." He said it to three

people, the owner of the tailor shop, the restaurant shop, and the jewelry store.

496) The defendants THACH and VO left the Mekong Center. Out on the sidewalk they again started laughing at me and went down the street two doors to the Dai Nam Restaurant to celebrate.

497) Back in April, on the 27th, in the evening, at the meeting at THACH's house where the defendants THACH and VO laughed at me and threatened me and my family, the meeting where I met the man who was introduced as the brother of 4 Star General Khiem, the defendants THACH and VO had told me twice, in very strong language, that I should not go to the police because the defendant VO was very strong with the police and they would not listen to me and if he tried to take his gas station back they would have arrested

and the police would lock me up.

498) On the day after that evening meeting of the 27th, on the 28th of May, I called a lieutenant I knew on the District of Columbia police force, Lieutenant Stanley, and asked Lt. Stanley if, as the owner,I could get help from the police to evict the defendant VO from the station. Lt. Stanley asked me to let him check on it, because he had heard something on that gas station, and he would call me back. Lt. Stanley called back that same day and told me that the defendant VO had some kind of paper filed showing him as owning the station and that he was very sorry but, because defendant VO had filed this paper, he, Lt. Stanley, could not get involved.

499) This unwillingness of someone I knew on the D.C. police force to get

involved was in my mind when I decided to sign the one dollar contract earlier in the day and it was on my mind now. I remembered the defendant THACH telling me that the defendants, THACH and VO, were strong and the American law was weak.

500) I knew at this time that my only hope to retrieve any of my investment in time and money and keep myself and my family from harm was to secure the business of the Mekong Center food store by paying the twenty thousand dollar ($20,000.) purchase price agreed upon between my wife and myself on the one hand, and defendants MINH and LUU on the other hand.

501) On the same day, back on the 28th of April, that the defendants VO and THACH had had breakfast with me in the restaurant at the Mekong Center and

demonstrated to me the friendship of the defendant THACH with the "cowboys" and asserted how they could kill anyone if asked by the defendant THACH. On that same day in the afternoon, a phone call had come into the Mekong Center. The caller asked for the defendant MINH and introduced himself on the telephone as "Tom Brown" from the American Service Center. He said he was looking for the defendants MINH and LUU who had given the American Service Center a bad check to pay for a Mercedes automobile in the amount of fifteen thousand dollars. ($15,000.) This man Tom Brown said that if the check was not made good right away by the defendants MINH and LUU, the American Service Center was going to have the defendants MINH and LUU locked up by the Marshal. He asked me to notify MINH and LUU of this. I

replied that this was not my business. Tom Brown then said that he knew it was not my business, but as long as I was there, I could give the defendants MINH and LUU the message. I agreed to do that.

502) On the 30th of April, a man came to the Mekong Center food store while I was there in the afternoon and identified himself as Tom Brown from the American Service Center. He was a tall American. At this time Tom Brown asked me if I had delivered the message to the defendants MINH and LUU. I said I had. Tom Brown told me to tell MINH and LUU that if they did not make the check good by May 2, the American Service Center would have the marshal lock them up. I said I would deliver the message.

503) Throughout these conversations

between me and the defendants VO and THACH from the time when they told me at breakfast that they would help me him get the lease from defendants MINH and LUU and showed me the "cowboys," the defendants THACH and VO had insisted to me that the defendants MINH and LUU had a need for fifteen thousand dollars ($15,000.) right away to cover the bad check and that they had talked to MINH and LUU who said that they needed the fifteen thousand dollars right away and that I could pay the five thousand dollar ($5,000.) balance of the purchase price for the Mekong Center food store business a few weeks later.

504) At that time, even with the loss of the gas station through the extortion and fraud of the defendants VO and THACH, and with my and my wife's capital from my mother-in-law tied up in the inventory of

the Mekong Center food store, I still had access to another five thousand dollars ($5,000.) if I needed it, even apart from the cash flow generated by the food store itself, which was by then, on May 2, 1986, up to around six or eight hundred dollars ($600. or $800.) a day average, or between forty-two hundred dollars and fifty-six hundred dollars ($4,200. and $5,600.) a week. (Vietnamese stores operate seven days a week.)

505) While I was worrying about these things and worrying about how I was going to get the money from VO at 3 PM and use it to get MINH and LUU to sign the lease, a Vietnamese lady whom I had met before and who was now introduced to me as the wife of Four Star General Vien (Four star generals being very, very, very important in Vietnam) invited me to come to the

party at the Dai Nam Restaurant where VO and TACH were celebrating and told me that VO and THACH and even she were going to help me get the lease from the defendants MINH and LUU. I went to the restaurant unwillingly out of a mixture of fear and deference. At the restaurant this lady, who was about sixty-five years old, was now claiming to to be his "sister," told me that she understood that I was upset with the thirty thousand dollar note and the one-dollar contract for the sale of the service station. But she said that she wanted me and the defendants VO and THACH to work together and be "strong" together. She told me that the important thing now was for not to be upset about the thirty thousand dollar note and the one-dollar contract for the sale of the station but for me to get the lease for

the food store business from MINH for my wife. She said that if I did not get the lease that day from MINH and LUU with the help of VO and THACH she would get the thirty thousand dollar note and the one dollar contract back from VO for me. (Weeks later I asked defendant THACH for her number to do this but THACH refused to give it to me.)

506) At three O'Clock PM I,I, VO and THACH arrived back at the McLean Bank in the van of the defendant VO. The defendant THACH, still fraudulently claiming to be "the" owner and president of the bank, said to me that it would be unseemly for him, as the president and owner of the bank to be personally involved in anything so small as a fifteen thousand dollar certification of a check and so he could not go in the bank; it

would smack of favoritism toward his Vietnamese friends and countrymen. VO and I went in the bank and I sat in the lobby. VO went to a lady cashier and very quickly wrote a check and had it certified with a stamp almost before the I knew what was happening. The check was made out to me in the amount of fifteen thousand dollars.

507) When the lady had certified the check, I started to get the check from VO, but the defendant VO stopped me, saying that he, the defendant VO, would hold the check, and he would get the lease from the defendants MINH and LUU because, he said that if he gave it to me, I would give the check to MINH and LUU without getting the lease and he, VO, did not want to see that happen. This was a fraud and a deceit. In fact all these four defendants had

arranged it so that they would stage a scene to trick me into doing just that, endorsing the check to MINH and LUU without getting the lease, with the threat of physical force lurking in the background. I realized I was being defrauded and extorted yet again.

508) VO hurried out of the bank, motioning me along and grabbed me and pushed me into the van. From the bank, I, VO and THACH, in VO's van, immediately drove to the home of the defendants MINH and LUU at the Skyline Towers Condominium, Apartment 105, at Bailey's Crossroads.

509) On information and belief, I state that previously that day, one or both of the defendants THACH or VO had called the defendants MINH and LUU and had told them that I, together with VO and THACH,would be arriving at about the time

that we, in fact, arrived.The scene that ensued was all staged and was an act to deceive and defraud the plaintiff.

510) The defendant THACH began to set up this fraud and deceit on the way to the house of defendants MINH and LUU in the van. He told me he would handle everything for me. Don't say anything when we get to MINH and LUU's, he told me VO and HOAI, you listen to me, we must plan very carefully. When we get to the MINH's house, do not give them the check VO, you tell them we want the lease before the check. Then I, THACH, will say the same thing and back you up.

511) When they arrived MINH and LU were waiting for them and had five glasse all set up for drinks. All sat down. V said to MINH and LUU that they would hav to sign the lease for me before they coul

get the check. THACH had the lease, which I had prepared for the defendants MINH and LUU to sign. It incorporated the terms which the parties had agreed upon and which my wife and I had acted upon and partially performed.

512) When VO said this the defendant MINH let out a great roar and, speaking loudly, crashed his fist on the table and ordered THACH out of the table. He did this so loudly and forcefully that at first I thought that surely VO would leave. But VO did not move. Then, however, MINH got carried away with it and did it so many times that I suddenly realized that it was an act and that again some trick was afoot.

513) MINH said loudly that he was dealing with millions, tens of millions and hundreds of millions and reproached VO

for approaching him and threatening hi
over a small amount like fifteen thousan
dollars.

514) Suddenly I felt that all four o
these defendants were working together
that this had been set up beforehand and
for the first time I realized that al
four of these defendants had been workin
together for some time. I was afraid.

515) I said to VO: "Keep your fiftee
thousand dollars and get out and get home
I don't want it. I don't want to borro
it."

516) At this point THACH stood up an
said to VO: "Hey VO, I am THACH and I a
the guarantor for this fifteen thousan
dollar check." This was a fraud and
deceit. "Just give it to Mr. Hoai and le
him endorse it and give it to our uncl
and auntie (referring to MINH and LUU); i

something happen to the check I will pay you back."

517) I did not know whether THACH was going to forge the endorsement or what, but knew that THACH intended to endorse the check over to MINH and LUU whether I actually endorsed it or not, from everything that had gone on up until then. The threat of physical violence, I suddenly now knew, was there behind MINH and LUU as well and all four of these defendants were working together, THACH being the dominant one.

518) VO took out the check and reached over and handed it to me, looking in my face, staring in an intimidating stare, without a trace of friendliness. "Mr. Hoai," he said, "endorse the check and give it to uncle and auntie. THACH is responsible for it." THACH was standing

up, also staring at methe plaintiff with an intimidating stare without a trace of friendliness. I felt in my mind as if it did not matter how much I paid or worked or how much my wife and I built up the food store business, these defendants were going to threaten me with violence and take the investment from us that my wife and I had built up.

519) I endorsed the check over to MINH and LUU. MINH took the check back to his bedroom and placed it out of sight. He came back in and stood at the table beside his wife and looked at me. "We are very sorry, Mr. HOAI," he said, "We are a little upset, we cannot sign the lease today, we will sign it tomorrow." Then up spoke the defendant THACH: "Well, Mr. VO and Mr. HOAI, our uncle and auntie say so; we had better believe them and we had

better go now." VO, THACH and I left with me leaving because I was so upset with what had been done to me.

520) In the van I asked the defendants VO and THACH why, when I had told them I did not need the fifteen thousand dollars and to take the check and leave, they did not do as I asked. THACH said that "We were trying to keep calm so that they would sign the lease for you, but they didn't sign, what can we do ?" A little later THACH said: "I will make them sign." I said: "Whatever you say. Take me to the Mekong Center." The two defendants did.

521) From May 3, 1986, until May 15, 1986, I went to my franchise gas station at 2305 Pennsylvania Avenue, S.E., in the District of Columbia, every day for two or three hours only. During this time the

employees whom the defendant VO had brought in were there and they were very hostile to me. They would let me sit in the chair I had occupied and use the telephone. But all of these people would stare at me and say nothing. If I spoke to them, they would either not reply or they would say, "We are working now, don't bother us," or something similar and turn away. Obviously they had been instructed to act as if I was not there.

522) On these days, I saw others in the gas station, young ethnic Vietnamese men who did no work of the gas station and made no effort to do any. They just hung around. Several of these he recognized as having been among the "cowboys" who were in the restaurant at the Mekong Center occupying 4 or 5 tables back on the morning of April 28, when the defendant

THACH made a display of shaking hands with and greeting the "cowboys"
and told me how they could kill people. One of these "cowboys" I recognized as having seen in the restaurant that day I heard called by the name of Minh by some of the others. When I was in the station on one of these days, an older ethnic Vietnamese man whom I knew by sight came into the station to get some work done on his car and I asked him if he knew the one known as Minh, pointing out that "cowboy." The man told me that Minh was a very bad guy who had been a problem with a record at the police station who was known at the court house in Arlington.

NO. 88-765

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

APPENDIX II (Supplemental) PART F

Laurence A. Elgin *
John D. HEMENWAY
4816 Rodman St., N.W.
Washington, D.C. 20016

*Counsel of Record

CONTENTS OF THIS VOLUME OF APPENDIX II

(Supplemental) APPENDIX II

PART F

Partial text of the Sworn Affidavit of PLAINTIFF/PETITIONER THANH VONG HOAI of March 25, 1987.

Paragraphs 608) through 675) pp 352-397

(Remainder of Affidavit in previous or subsequent parts.)

608) At this time my wife and I had access to, within my and my wife's family connections, another five thousand dollars ($5,000.) to complete paying the agreed upon purchase price of the Mekong Center food store business. But I was determined not to pay the last five thousand of the purchase price until I got the long promised lease signed.

609) At the meeting on the evening of May 2, 1986, where I was so badly deceived and extorted, the defendants MINH and LUU, as aforesaid, told me that they were too upset to sign the lease that evening and said that they would sign the lease tomorrow.

610) The next day, May 3, 1986, taking the defendants at their word, I called the defendants MINH and LUU and asked them about signing the lease. The

defendants MINH and LUU over the phone said that both of them were still upset and not well and they could not sign the lease that day.

611) From that day up to May 12, 1986, I called the defendants MINH and LUU almost every day on the phone and the defendants MINH and LUU made up some excuse to avoid signing the lease. Either they did not feel well, or they were too busy in Philadelphia, or they were having marital discord or were having difficulty with their child or children. Sometimes they stopped by the food store which my wife and I were running every day and offered the excuses there as well.

612) About the 11th or 12th of May the defendants MINH and LUU offered the excuse to me that they had lost the lease which I had given them. I said I would

make them another lease and I did and gave it to defendant MINH on or about May 12, 1986.

613) At this time the defendant MINH said he would have to give the newly drafted lease to his lawyer and he would need a couple of days.

614) A couple days later defendants MINH and LUU stopped by the Mekong Center food store while I and my wife were running that business. When my wife and I asked defendants MINH and LUU if they had signed the lease for the food store business the defendants MINH and LUU said that they could not sign the lease because it was in English. My wife and I volunteered to get an interpreter and have the document translated into Vietnamese. The defendants MINH and LUU said they did not trust any intepreter. Whereupon I

with my wife volunteered to have the lease translated into Vietnamese and keep the English version as well and sign them both so that any inaccuracies in translation could be caught and rectified. The defendants MINH and LUU agreed to this and I and my wife a former judge in Vietnam, now working in the U.S. to translate the English language lease into Vietnamese and prepare the two as co-ordinate side-by-side versions.

615) About the 15th or 16th of May, I, joined by my wife,called the defendants MINH and LUU and told these two defendants that the two of us needed to talk to them. This was in the morning. The defendants MINH and LUU said that they needed to buy some food anyway so that they would stop by the food store and talk. That afternoon the defendants MINH and LUU came

to the food store. I gave defendant MINH the lease in English and Vietnamese versions. Defendant LUU was waiting outside in the rear of the building in the Mercedes car of these two defendants. Defendant MINH said that he and his wife were in a hurry and that they had no time to sign it, that they would have to take the lease in the two language versions and sign them and return them. I pointed out that it did not take but a minute to sign the two versions. Defendant MINH said: "No, no, we have no time." He took the leases in three copies and left with his wife.

616) From that time until the day of May the 27th I continued to talk to the defendants MINH and LUU almost daily on the telephone, requesting that they sign the lease. The defendants MINH and LUU

continued to make excuses for not signing the lease but they continued also in each conversation to make promises that they would sign the lease.

617) During this time, from the 15th or 16th until the 27th, I informed the other owners of the shops or stalls in the Mekong Center that they had better help me get the defendants MINH and LUU sign the lease because my wife and Idesperate to get MINH and LUU to fulfill their promises and sign the lease. My wife and I had informed these other shopowners of the essential terms of their agreement with MINH and LUU such as the twenty-thousand dollar purchase price and the lease and its term co-terminous with the master lease. MINH and LUU together with me and my wife had discussed these things in front of the other shopowners. Now again

she and I told the other shopowners about these terms and showed them all the dual language version of the lease.

618) My wife and I, as part of our agreement with the defendants MINH and LUU on which my wife and I, acting in reliance and good faith, had partially performed, had the only key to the overall building so that we had to be there to unlock the main door of the center before any other shopowners could get in the building to get to their stores in the center. Now, in desperation, my wife and I told the other shopowners that if the defendants MINH and LUU did not sign the promised lease in about a week we could see no other way to force that signing other than locking the main door and shutting down the entire center until the defendants MINH and LUU signed the lease for me and

my wife promised. Though they stood to lose money themselves the other store owners agreed that this was the only thing that my wife and I could do under the circumstances.

619) The other shopowners of the Mekong Center agreed to communicate and did communicate to the defendants MINH and LUU during this period that things had come to this desperate situation and urged MINH and LUU, or so my wife and I have it on information and belief from what the other shopowners told us, that they ought to sign the lease that they had for so long promised to HOAI and his wife.

620) It was against this background that my wife was telephoned at the Mekong Center food store on the morning of the 27th of May, 1986, by the defendants MINH and LUU who told her that they had decided

to sign the lease that evening. Overjoyed, she called me to come to the phone. Defendant LUU told me that she and her husband, the defendant MINH, wanted me to come to their condominium that very evening after closing the store in order that the defendant LUU and her husband could sign the lease for me and my wife. I readily agreed and hung up, thanking these two defendants and assuring the defendant LUU that my wife and I would be there.

621) Overjoyed, I went around and told the other shopowners that defendants MINH and LUU had agreed to sign the lease that evening. "We have our lease," he told them, "It will be signed tonight. Tomorrow we'll have a party," he told them. All the other shopholders congratulated them.

622) This telephone call was an act of wire fraud, designed to falsely promise the lease signing, which defendants MINH and LUU had no intention of carrying out, in order that the defendants MINH and LUU might set up the final extortion of the ownership of me and my wife in the food store business which we had established by our partial performance in reliance on the promises of the defendants MINH and LUU and our payment of the bulk of the purchase price as I have stated above My wife and I, anticipating a possible breach of our agreement with MINH and LUU by MINH and LUU had, wisely, as it turned out, insisted on the signing of a binding lease before, initially, paying any of the purchase price, and, then, pursuant to the wire fraud and deception of defendants MINH, LUU, VO, THACH and ARIF as set out

above, had insisted on it before paying the final five thousand dollars of the purchase price.

623) My wife and I relied upon this misrepresentation to their detriment and harm. It was designed to "set us up" for the final fraud and extortion designed to deprive us of our interest in the food store business and interfere with commerce.

624) That evening my wife and I went to the condominium apartment of the defendants MINH and LUU about 10:45 or 11 PM. When we arrived MINH opened the door and invited us in and asked us to have a seat.

625) Immediately the defendant MINH addressed me and said that he and his wife could not sign the lease as proposed, promised and agreed upon for so long

because the master lease which they had with the owners of the Mekong Center building did not allow them to sublease and the landlord did not allow it.

626) I asked why the defendants MINH and LUU had not told us this before during the months that they had promised a lease.

627) The defendant MINH said that was all that he and the defendant MINH could say. The landlord would not let them sublease.

628) I asked the defendant MINH about the other shopkeepers in the center and what about their leases.

629) The defendant MINH said that the other shopkeepers did not have leases but only papers in the Vietnamese language and he said they would give me and my wife a "management contract" paper in the

Vietnamese language.

630) I said that I had never done business in this country that way, that my wife and I had been promised a lease, that on that promise we had invested their money and built up the business and that we wanted the lease as promised.
I asked to be allowed to speak to the landlord in order to solve any concern or problem over subleasing.

631) The defendant MINH said that he and the defendant LUU did not want me and my wife to speak to the landlord and even refused to tell them the name of the landlord, of the owners of the building.

632) I insisted that we wanted a document in the American language that could be read by all the authorities that I would have to deal with in running a business. The American government, I

said, meaning all governments in America, whether federal, state, or local, cannot read the Vietnamese language.

633) The defendant MINH insisted that the only thing that he and the defendant LUU could give me and my wife would be Vietnamese language paper in the form of a "management contract." The defendant MINH then told me and my wife terms of this "management contract" which were entirely different from all that my wife and I and these defendants had discussed all of the time that they had been discussing the matter of me and my wife buying the business of the Mekong Center food store.

634) To begin with the defendants MINH and LUU at this time, as part of the fraud and extortion, and relying upon the extortionate credit transaction of the

so-called loan from VO to me on May the 2nd as alleged above, of which they knew in full detail, ignored the amount of the certified check on Suntech Sunoco's account made out to me by VO at that time and which then, by a combination of the atmosphere of physical threats and deceit by the defendants VO, THACH, MINH and LUU, I was then induced into endorsing and giving to these two defendants. The defendant MINH at this time proposed a whole new set of payments and conditions never before mentioned by these defendants in all of their many conversations with me and my wife, as if the whole fraud and extortion with the fifteen thousand dollar ($15,000.) certified check and the fraudulent thirty thousand dollar ($30,000) note had never happened.

635) First the defendant MINH told me

and my wife that the price of the "management contract" would be a total of thirty-two thousand dollars ($32,000.) broken down as follows:

A. A new payment of twenty thousand dollars for the cost of the "management contract" as if these defendants had never received the fifteen thousand dollars ($15,000.) on May 2.

B. A payment of four thousand dollars "security deposit."

C. An additional payment of one month's "rent" on the "management contract" of four thousand dollars ($4,000.) where these defendants and my wife and I had been talking of, and paying, a rent of two thousand dollars ($2,000.).

D. Still another payment of four thousand dollars ($4,000.) for the beat up

old van of the food store. This old van, a 1976 Chevy Van, very beat up by accidents, was not worth more than five or six hundred dollars ($500. or $600.)

636) The defendant MINH then told me and my wife that my wife and I would have this contract for one year and then, if the defendants were satisfied, these two defendants would let them have a "management contract" for another year.

637) The defendant MINH said that if my wife and I did anything during the year to displease the defendants MINH and LUU, the defendants MINH and LUU would kick them out of the Mekong Center and the only thing that would be returned would be the four thousand dollars ($4,000.) "security deposit."

638) I told the defendants that we did not want the "management contract"

being offered by these two defendants, what my wife and I wanted, I said, was the deal that had been agreed upon all along, with a lease in the American language for the term of the master lease. We do not do business that way, I told him, we want the lease in the American language because we want to be legal in this country and we want the two thousand dollar per month rent agreed upon.

639) The defendant MINH said that he and the defendant LUU could not do as my wife and I wanted.

640) I said, okay, that my wife and I would sell the business back to the defendants MINH and LUU. Additionally, we wanted the return of the fifteen thousand dollars that had been taken from me and given to the defendants MINH and LUU on May 2.

641) I suggested that we all meet the following morning at 8 AM and inventory the stock in inventory in the store and then the defendants MINH and LUU could pay me and my wife the cost of the goods at wholesale which, I informed the defendants MINH and LUU, was between forty-nine thousand and fifty-two thousand dollars ($49,000. and $52,000.).

642) Defendant MINH said that he and the defendant LUU could take it over. We don't have that kind of money now, he said, but we can get it for you later. I replied that that was fine and asked the defendant MINH to give me a postdated check dated for whenever they had the money. MINH said it would be about a week but the defendant LUU then interrupted and said they needed the money for something else and it would be about thirty to

forty-five days before the check would be good and I said that would be fine.

643) The defendants MINH and LUU then said that they would settle everything and give me such a check when the parties conducted the inventory the following day. The parties shook hands and my wife and I left saying that we intended to stop by the food store on the way home and get the papers that we would need the next day in doing the inventory and that we would go over them in order to be able to do the inventory quickly. These papers were the record book that my wife and I kept on our purchases and the credit owed and receipts for the rents paid to these two defendants, invoices and all the other papers that my wife and I had used in conducting the business.

644) Now, in fact, all of this was

once again a fraud and a deceit. These two defendants had never had any intention of keeping their agreement and this act of fraud was a misrepresentation as to what the agreement had been, a flagrant falsification of the terms of the bargain between the parties which actual agreement my wife and I long since partially performed on.

645) These newly fabricated false terms were known by these defendants to be false and the entire act of inducing me and my wife to come to the condominium under the false pretext that the defendants were finally going to sign the lease that was proposed in draft by me to these defendants some time before and the terms of which had been agreed upon and discussed for months, this entire act was itself a fraud and a pretext, solely

designed to make sure that my wife and I were occupied away from the Mekong Center food store while the agent of these two defendants, Mr. Sat, set up things to complete the fraud and extortion of the food center business by locking my wife and me out of our business. These defendants knew that the fraudulent terms that they were now proposing as if they had been the terms proposed before when in fact they were a radical change, they knew that these false terms would be unacceptable to me and my wife.

646) The man Sat was the man who, back when the parties first began discussing the purchase of the business by my wife and me at the urging of these two defendants, was represented by the defendant LUU to be the man who had helped her in the business for a long time and

whom my wife could rely upon to help her learn the details of the business as it had run before she and I took it over.

647) Mr. Sat worked for me and my wife in the Mekong Center food store business from the day that we began to operate the business on March 11, 1986, as set out above, up until about a week before the day of this evening meeting on May 27, 1986. At first the man Sat was very friendly to me and my wife and told us many of the facts about how the defendants MINH and LUU cheated the customers and their creditors and other things that these two defendants had done. He expressed his gratitude at being able to work for me and my wife instead of MINH and LUU.

648) About three days before this meeting on the evening of May 27, there

was another incident involving my wife and me and the defendants MINH and LUU. I caught the man Sat trying to sell some old, rotten food, as we thought MINH and LUU did before my wife and I bought the business and built up its reputation for selling decent food. When I ordered Sat to stop selling old food, the man Sat cursed me and quit the job. The next three days the man Sat hung around the Mekong Center in the other shops, quite visibly spying upon the me and my wife.

649) This evening of May 27, 1986, after my wife and I left the condominium of the defendants MINH and LUU, we proceeded to the Mekong Center only to find that the man Sat was there waiting for us and the man Sat had changed the lock on the door to the Mekong Center so that my wife and I could no longer enter.

Sat told me and myh wife that on orders from the defendants MINH and LUU he had changed the lock and he could not let them enter. I told the man Sat that I was going to call the police. The man Sat told me that the defendants MINH and LUU had already called the police and that if My wife and I tried to enter the Mekong Center and tried to get to our food store business we--my wife and I--would be locked up. We believed this because of the times that the defendants THACH and VO had bragged to us that they had the police, in Arlington and D.C., on their side. During the gas station extortion, in May, when the defendants VO and THACH had the cowboys hanging around the gas station during my visits there, the defendant VO on one occasion also had with him a large, black American whom I had

never seen before. This man was tough looking. Pointedly, in front of me, the defendant VO had asked this man at the time: "You're off duty, aren't you ?" When this man replied that he was, VO said: "Good, good."

650) My wife and I had to go home without the business papers of the food store. This was only a few days after I had been again threatened with death and bodily harm for myself and my family at the gas station in connection with the fraud and extortion practised upon me in order to take over that business and my wife and I, when we got home, were very apprehensive. To both of us this was beginning to look like a similar setup. We believed, based on the past threats and encounters that in the morning at the Mekong Center there would be a combination

of threats of force and the manipulation of the police by the defendants MINH and LUU and that THACH and possibly VO would be in it along with some of the cowboys. My wife and I discussed the possible ways that the defendants would try and trick and intimidate us. We thought one of the defendants, for example, might try and fall over and pretend that I had struck him and use that as a pretext.

651) Because of these fears and apprehensions engendered by the past behavior of the defendants THACH and VO, whom we now knew to be in league with the defendants MINH and LUU, we decided that my wife should not go to the food store the next morning and that I should go early and hide in the store of their friendly rival in the food store business, Mr. Tung, who owned the Saigon Market next

door and from there I could see what was going on next door without being seen.

652) I got up early and went to the Saigon Market about 7:30 AM and positioned myself where I could see what was going on at the Mekong Center next door without being easily observable myelf.

653) About ten or fifteen minutes before 8 AM, I saw a red Chevrolet Camaro, with Texas license plates, the number of which I could not read, drive up in the alley behind the Mekong Center. It drove to the rear door and the driver parked it behind the rear door. Four youngish men, between 19 and 30 by their appearance, very strong looking, got out of the Camaro and went in four different places around the Mekong Center building. Only one was in the rear where I could still see him. He looked in the windows of the Mekong

Center. He took up a position in the alley. The other three disappeared around corners of the Mekong Center building so that I could no longer see them.

654) The one young man remained where I could see him, obviously waiting. He was still waiting around quarter after eight or so when the car of MINH and LUU, the Mercedes from the American Service Center, pulled up behind the Mekong Center. MINH, I could see, was driving. MINH parked the car and the defendant THACH got out of the car. Then the defendants MINH and LUU got out of the car as well. There was another man that got out, a large man. Later Mr. Tam, an employee of Mr. Tung went out and came back and told me that this was the son of MINH and LUU, named Vinh. A few minutes later another car came and parked and the

daughter of MINH and LUU got out.

655) The rear door of the Mekong Center was secured at this time with the padlock that had been put on the night before to keep me and my wife out and another, large padlock, to which my wife and I had the only key, a key which the defendants MINH and LUU had transferred to me and my wife back on March 11, 1986, when the defendants MINH and LUU had urged me and myh wife to enter the store and begin our new business because the day was auspicious. The defendants MINH and THACH took a tire iron and parts of a car jack and what looked from a distance like a hammer and broke this larger lock. All these defendants and those with them then went into the Mekong Center.

656) About this time I noticed that the red camaro was gone. It had gone

while he had been watching to see what the defendants MINH and LUU and THACH and the young man were doing, and while Mr. Tam had gone out to see who the young man was.

657) As I noticed this, almost immediately after the defendants MINH, THACH and LUU entered the Mekong Center building, three police cars arrived with two officers in each car. The officers went into the building. Just a little later a fourth police car arrived. My wife and I have it on best information and belief that fraudulent representations concerning ourselves and our activities were made to the police department in summoning these officers and that fraudulent representations were made as to the ownership of the food store business.

658) I called my wife and she begged

me not to go into the center because she was afraid I would be hurt, urging me to remember our four children. I agreed to not go into the Mekong Center.

659) My wife suggested that I call the police. I pointed out to my wife that I had already been told by the defendant THACH that they, meaning THACH and VO, controlled the police, and that the defendants MINH and LUU had already called the police the night before and that I believed that if I called the police they would likely arrest me, not MINH and LUU.

660) Throughout our dealings with the defendants MINH and LUU, my wife and I learned of more and more acts of fraud using the mails or the telephone that the defendants MINH and LUU were involved in. Some of have been described above. Many involved the defendant THACH as well.

There were the instances of insurance fraud, where they would mail in claims and collect on them for worthless, spoiled food, after arranging for fraudulent "water damage", following a pattern of fraud that they had begun back in South Vietnam. They then, in two instances, collected on the food as if it had been good when it was spoiled. There was an instance when they attempted to collect for damage to their house on River Street. At first their claim was refused. Then the defendant THACH showed them how to make fake damage to their house look more authentic. Defendants MINH and LUU then hired THACH to repair the damage and filed a fraudulent claim which they collected on and much of it was taken by the defendant THACH as his share of the fraud.

661) In their operation of the Mekong

Center the defendants MINH and LUU perpetrated a number of frauds. They did not inform the owners of the building that they were actually subleasing in violation of the master lease and kept the difference by the device of the Vietnamese language "management contracts," and as part of that fraud they collect from the purchasers of the "management contracts," the actual store owners, sales tax, but they do not pay the full amount of the "sales tax" that they collect to the tax authorities. They only pay part, on information and belief, which they mail in, but they keep the rest while fraudulently claiming that they have paid it all.

662) In allegations above the operation by the defendants MINH and LUU of securities fraud has been described in

connection with land in Fairfax county. They are now, and have been for some time in a securities fraud of a similar nature in connection with their "big business" in Philadelphia, Pennsylvania. They advertise in a Vietnamese language newspaper that circulates in Maryland for investors in their International Culture Center in Philadelphia with no intention of honoring their promises to these investors or paying them back. One of their standard patterns that they have done a number of times is to take money as an investment from ethnic Vietnamese for these real estate development projects and then when the people ask for the return of their investment they tell the people that they have control of the authorities and will turn the investors in for "welfare fraud" if the investors try to get their

money back. Because they have discovered that many Vietnamese refugees living on welfare have a secret horde of cash or securities. In this way they prey upon their fellow countrymen.

663) My wife is of ethnic Chinese Vietnamese extraction, or what is sometimes called "Overseas Chinese." Her family in Vietnam was engaged in the retailing business in food and other goods. Growing up she worked in the retail business, including retailing of food. The she worked for over four (4) years at the last of her time in Vietnam in the Post Exchange (PX) of the United States military, gaining further experience in retailing working with U.S. currency. She has extensive knowledge of retailing.

664) The Mekong Center food store, in

the years that it was managed by the defendants MINH and LUU from 1976 through 1982, before they let it go downhill so badly, had gross annual revenues in a number of years of almost two million dollars ($2,000,000.) and even better in a few years. Traditionally, Vietnamese stores stay open seven days a week and the Mekong Center food store, throughout its history has so stayed open seven days a week. Thus the daily gross volume of the Mekong Center food store in the years that the defendants MINH and LUU were running it profitably, exceeded five thousand dollars ($5,000.) per day.

665) The history of the business shows that the target which we adopted of reaching a daily gross volume of three thousand dollars ($3,000.) per day in a period of one year was extremely

realistic. In the period from March 11, 1986, until May 27, 1986, when my wife and I actually were able to run the business, a period of a little over two and one half months, we increased the daily gross volume of the business from one hundred dollars a day ($100.) or less to nine hundred dollars ($900.) a day. This was despite the fact that our ability to order goods was hampered by the abyssmal credit history and rating of the defendants MINH and LUU that was associated with the center in the minds of many of the ethnic wholesalers as set out above and that the lack of the promised lease made it impossible for us to draw on the greater lines of credit available to us in San Francisco and elsewhere, centers of supply for oriental ethnic foods, through plaintiff's wife's extended family.

666) Had my wife and I not been interfered with and defrauded by the defendants MINH, LUU, THACH and VO, we would have averaged fifteen hundred dollars ($1,500.) per day and for the other remaining five and one half years on the master lease (assuming exercise of the last five year option by the primary tenants since there was no economic incentive to do otherwise) would have averaged a minimum of three thousand dollars per day gross volume. This would translate into a first year's annual volume of five hundred and forty-seven thousand and five hundred dollars ($547,500.) and in the years thereafter a gross volume of one million and ninety-five thousand dollars ($1,095,000.) per year.

667) Industry figures for ethnic

specialty food retailing and the experience of this market in particular as well as other similar ones, shows that the gross profit on such a business at these volumes is thirty percent (30%).

668) I, by the endorsed certified check on May 2, 1986, paid the defendants MINH and LUU fifteen thousand dollars of the purchase price and I am entitled to the return of that as a damage.

669) I and my wife invested in excess of forty-nine thousand dollars ($49,000.) in the inventory of the Mekong Center food store during the time when we had been defrauded into believing that we owned the business and did own it based on our partial performance of the purchase contract and before the business was defrauded and extorted from us. The greater part of this inventory remained in

the store and was unsold when the business was taken from me and myh wife in the culminating act of fraud and extortion on May 28, 1987. The retail value of this inventory was approximately sixty-four thousand dollars. ($64,000.) After the business was taken from us, the defendants MINH and LUU, whose credit was nonexistent with the necessary wholesalers and suppliers as aforesaid, without buying any more goods or inventory, sold everything they could of the inventory accumulated by me and my wife for the store and then sold the business again, with virtually no inventory, for forty-five thousand dollars ($45,000.) sometime in July of 1986 to a third parties named Mr. Hiep and Mrs. Thao.

670) My wife and I during the period in which we were defrauded into the

ownership of the business in order that it might be extorted from us paid the defendants MINH and LUU approximately six thousand dollars ($6,000.) in rent including paydowns to wholesalers of back debt accumulated by the defendants MINH and LUU for which we were to receive credit against rent under our agreement with MINH and LUU on which we performed in substantial part. In addition my wife and I spent over one thousand dollars ($1,000.) on services to improve the store, including rodent and pest elimination, installation of alarms and the like. I expended over one thousand dollars ($1,000.) in time and materials fixing up the store, including repairing all broken shelving and extensive painting. My wife and I gave defendants MINH and LUU about two thousand and one

hundred dollars ($2,100.) in "sales tax" proceeds for Arlington County at a figure of four percent of gross sales. I have it on information and belief that the defendant MINH did not report the full figure of this sales tax to Arlington County officials or pay the full amount to them paid to him by me and my wife.

671) The defendants MINH and LUU have a widespread reputation in their community for acts of fraud and deception, which frequently involve use of the telephone and often the mails. The defendants THACH and VO have a widespread reputation for acts of fraud and deception as well, also frequently using the telephone and/or the mails and also a widespread reputation for acts of violence or threats of violence. The defendant LUU has a widespread reputation in the community for acts of

violence as well.

672) The fraud and extortion practiced upon the my wife and me in the matter of the Mekong Center interfered with commerce.

673) When my wife and I took over the Mekong Center food store business on March 11, 1986, it had a reputation and standing in the community and within the trade that was totally negative. The defendants MINH and LUU had given it such a bad reputation that few other merchants wanted to deal with it and few customers wanted to patronize it. It had a large reservoir of ill will. My wife and I, in two and one half months, built up the business of the Mekong Center food store to a creditable standing among merchants and a good reputation in the community.

674) The defendants MINH and LUU used

the proceeds of their fraud and extortion practice upon my wife and me to acquire or operate in whole or in part other businesses and operations including their real estate promotion in Philadelphia, known as The Mekong Asian International Center, the operation of the business of subleasing through "management contracts" in the Mekong Center on Wilson Boulevard in Arlington County, Virginia through helping supply the rental payments on the prime lease, the fraudulent business of skimming sales tax proceeds in the Mekong Center, the operation of their various frauds and cons out of their house on River Street in Arlington, also sometimes used as their home, their business of speculating in real estate and other businesses and operations.

675) Defendants MINH and LUU and

their associates defendants THACH and VO, in connection with this matter of the Mekong Center food store, told numerous lies and falsehoods about my wife and me that were deliberate attempts to damage the business and business reputation of my wife and me, such as, after the final lockout and extortion, that my wife and I had not paid the rent on the food store and that is why the defendants MINH and LUU and THACH had to evict us.

88-765

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

APPENDIX II I (Supplemental) PART A

Laurence A. Elgin *
John D. HEMENWAY
4816 Rodman St., N.W.
Washington, D.C. 20016

*Counsel of Record

CONTENTS OF THIS VOLUME OF APPENDIX III

(Supplemental) APPENDIX III

PART A

Partial Text of the Sworn Affidavit of the PLAINTIFF/PETITIONER THAN VONG HOAI of March 25, 1987.

Paragraphs 523) through 609) pp 1-75

(Paragraphs prior to 523) are found in Appendix II.)

NOTE:Paragraphs 610) through 675) are not included in this part of Appendix III, but were included at the end of Appendix II, Part F, pp. 352-396, which is the entire Part F of Appendix II.)

523) On or about the 3rd or 4th of May, I was sent by my wife to do some shopping at the Saigon Market. I had with me my son who was then two and one half years old. As I left from the Saigon Market out the rear door and I was starting down the sidewalk holding the hand of my son, my way was blocked by three young Vietnamese males about 25 to 29 years old. One of them said: "Are you Mr. Hoài, we want to talk to you right now." "Stand right there," the young man ordered, pointing to a spot on the sidewalk, "We want to talk to you."

I, holding on to my son's arm very strongly, went to the spot pointed out and stood there. All three stood very close to me, staring at me in an unfriendly stare. The young man who was doing the talking asked me roughly: "How come you

lie to THANH (defendant VO's given name) and THACH?"

I said: "Please let me tell to all of you that I confirm that I did not lie to them." (This was all in Vietnamese.) Another one of the three young men said: "You sell the station to them and now you say you did not sell the station to them and you try to interrupt them. Why do you try to interrupt them?"

I replied: "I did not interrupt them. You can ask any Vietnamese people in this area and see if I have done any of them wrong since I came to this country. I have not done wrong to anybody." One of the "cowboys" then said: "You signed a contract to sell the station to them. Now you say you will not sell the gas station to them." I said: "It's true I signed the contract for one dollar but I did that

because they asked me to do that to help them to borrow money from the bank or THANH's father. Why would I really sell the station for one dollar when I tried to buy it and couldn't in 1980 for one hundred and thirty-nine thousand dollars." After more conversation in this vein the leader, who I felt maybe believed me and not what he had heard from VO, even though the others wanted to hurt me, allowed me to leave, saying that he would check my story with THANH, as he called the defendant VO. Then I felt very lucky to have gotten away unharmed and very frightened.

524) A few days later after this frightening encounter with the three cowboys, I called the man I knew on the D.C. Police Force, Lt. Stanley, again, and asked Lt. Stanley if, as named lessee and

franchisee, explaining that if a friend under the guise of lending money, had occupied the station, was there a way I could get the police to help me get my station back. Lt. Stanley told me that it was a civil matter and I would have to get a lawyer. Lt. Stanley recommended a man who was a lawyer in Oxon Hill, Maryland, Prince George's County. I called that man who said that he was recommending another lawyer in D.C. By the time that I got into a conference with this lawyer, however, for various other reasons that appear in subsequent allegations, I had retained another lawyer, defendant MY LINH SOLAND and this lawyer whom I ultimately reached through the advice of Lt. Stanley, told me that my case was an easy one and that I should let the attorney I had already retained, the defendant MY LINH

SOLAND, take care of it. This will appear in more detail below.

525) On the 15th of May I went to the gas station about 10 AM. There I was confronted by the defendant VO as I entered the gas station office. I was standing in front of the desk. Defendant VO was standing behind the desk. VO said: "HOAI, there is nothing here for you, none of your business. Better for you to get out and away from here or somebody will get you out." I said: "The gas station belongs to me. All property here belongs to me, not you." The defendant VO said: "Fuck," and walked out the door, saying, "You will see who belongs to who." Standing outside, the defendant VO said: "If you want to see your family you will get out, away from here now, or your legs will be broken." The defendant VO got in

his van and drove off. There were no "cowboys" in the station at this time, but I believed that the defendant VO was going to get some and I was frightened and I got in my car and left.

526) I went home for a while. After a while I went to see my wife at the Mekong Center food store. We did not know what to do. The next weeks we worked on trying to get the Mekong Center food store situation straightened out as alleged more fully in the subsequent count, but the extortion of that business from us was completed on the 28th of May as alleged more fully below.

527) On June 2, in despair, now having been defrauded and extorted out of both businesses, my wife urged one more try. She thought maybe if she went with me and the defendant VO brought his wife

to the gas station and we talked among ourselves, VO with his wife would see how I had been wronged and would let me back into my gas station or, at the least, she and I could demand and get back the thirty thousand dollar note for which we had never received any actual money. My wife and I did meet defendant VO and his wife at the gas station that day but the defendant VO only reiterated his assertion that the gas station was all his now and he owned it. To the arguments of mine that I was the lessee and franchisee from SUNOCO, the defendant VO only said that he did not care about that because, he, VO, owned the gas station now and everything belonged to him now and he did not want any more problems and was not going to talk about anything else. My wife and I were forced to leave without having

achieved any redress for the wrongs done us or any restitution of what was taken from me during the defrauding and extortion practiced upon me by the defendant VO, the defendant THACH and the defendants MINH, LUU and ARIF with regard to the gas station business, lease and franchise.

528) Subsequently, I learned that the defendant had taken from me also, by fraud and false representation, the business and trade name which I had originated, the name of the SUNTECH SUNOCO, INC., and that defendant VO had used all along the moneys he obtained by the fraud and extortion from me and my business to obtain by fraud and deceit occupancy and other business licenses to which I was entitled and obtained them instead by these frauds and deceits in the name of himself, the

defendant VO, as if he, the defendant VO, were the legitimate owner, all based on the documents that he obtained by fraud and extortion.

529) Thereafter, the defendant VO did hold out to all and sundry, falsely and fraudulently, without revealing that he had in fact obtained his control of the station by fraud and extortion, that he, the defendant VO, was the owner of the gas station business and the lessee and franchisee of Sunoco and committed further fraud and extortion as set out in the following paragraphs and counts, completely depriving me of my gas station franchise and lease despite my best efforts to defend my property, the station, get my station back and mitigate the damages to me and my business. VO was joined and reinforced in these

representations by the defendants THACH, ARIF, MINH and LUU.

530) During the time that he exercised control of the gas station business, from mid-April when he and the defendant THACH first made extortionate threats of violence against me and my family, the defendant VO, who was not properly qualified and trained, whether by formal training or experience or otherwise, to run a gas station, and who was a violent and irresponsible and reckless person in any case, made a mess of the gas station, kept no proper records, did not obtain all the necessary licenses, even fraudulently, did not have proper bonding and insurance, failed to keep proper payroll and other business records, violated the terms of the lease and franchise agreements with Sunoco which

he had appropriated from me, engaged in, and allowed others to engage in, improprieties with the help, "joyrode" a customer's car that was in for repair, leading to an accident, and otherwise destroyed and damaged the gas station business, franchise, lease and dealership beyond repair, doing much damage to my business and business reputation.

531) This was not the first time that the defendant VO had engaged in such a scheme or pattern of racketeering activity consisting of fraud and extortion. After the acts of fraud and extortion recounted herein had been committed by the defendants and had resulted in my losing my gas station business and in that business being severely damaged and my reputation being damaged, I called a man whose hot dog van I had once repaired when

I ran the body repair shop on Capitol Hill described above. This man's name is Mr. Hy and he also is an ethnic Vietnamese. When I contacted Mr. Hy, Mr. Hy told me of the attempts by the defendant VO, using the cowboys, to take from them their hot dog vending business and control by fraud and threats of force and violence the best locations for hot dog and refreshment vending in the District of Columbia such as at the Air and Space Museum on the mall. In this scheme of fraud and extortion there were fraudulent representations of defendant VO's being a public official known as the "liaison" with the D.C. police in charge of assigning vendor locations for the D.C. government, a representation as fraudulent as, and remarkably similar to the representation in this instance that the

defendant THACH was the owner and president of the McLean Bank. There were death threats sent through the mail. There was both actual collusion with at least one police officer, and fraudulent representations of collusion with and control over others. In essence it was the same combination of fraud using the telephone and sometimes using the mail with extortion that is seen in the present instance.

532) As laid out more fully in subsequent counts, on May 27 and 28, the defendants MINH, LUU and THACH, along with the defendant "cowboys," by a similar process of fraud and extortion to culminate the pattern of such activity alleged above, took from me and my wife the control of the Mekong Center food store and cut me off from retrieving any

of what my wife and I had invested in that business. This was just five days before the fruitless meeting between my wife and me and the defendant VO and his wife at the gas station described above.

533) As I describe more fully in subsequent statements, there were additional acts in the pattern of racketeering activity of these and the other defendants that took place after this meeting on June 2, 1986, involving one or more of mail or wire fraud, extortion, extortionate credit transactions, interfering with commerce, or bribery.

534) All of the above acts of fraud and those set out and summarized subsequently consistently relied upon or incidentally used wire fraud since the telephone was an integral part of the

communication net, or, in a few instances, fraud by mail.

535) All of the above acts of fraud and extortion and those summarized subsequently in my affidavit constitute interference with interstate commerce as I understand those crimes and apply them to what happened to me.

536) The taking of the gas station lease and franchise from me as set out above and subsequently in this count by fraud and extortion was set up and enabled by the extortionate credit transaction of the defendants VO and THACH in which they intended from the outset to take back, within a year, a gas station lease and franchise worth in excess of one hundred and seventy-five thousand dollars ($175,000.) for loan funds which they actually put up between them of

approximately ten thousand dollars ($10,000.). The thirty-five thousand dollar figure which the defendant VO represented that he was going to lend was a fraud and a deception. The defendant VO never put up any money of his own and the money put up for him in this scheme of fraud and extortion by the defendant THACH never amounted to more than the seven thousand dollars ($7,000.) put up on March 21, 1986, at the meeting with Ernie Peele in the form of cashier's checks plus whatever money he put up to cover the dishonored check to Sunoco after I was notified on April 24 that the check for the gasoline had been dishonored. The supposed loan of fifteen thousand dollars ($15,000.) given fraudulently and extortionately for the thirty thousand dollar ($30,000.) note was a fraud and a

deception in which no real benefit of it was ever allowed to me even though, constructively, I was entitled to it and the benefit of it in the form of the major part of the purchase price payment to defendants MINH and LUU for the Mekong Center food store business. Therefore, this was an extortionate credit transaction collected by extortionate means under the law to my best belief and understanding.

537) Similarly the "loan" from defendant VO (really VO and THACH) to enable me supposedly to pay defendants MINH and LUU the fifteen thousand dollars ($15,000.) toward the twenty thousand dollars ($20,000.) purchase price of the Mekong Center food store business (my wife and I had access to, and intended to supply the other five thousand dollars

($5,000.) of the purchase price in exchange for the lease as is more fully set out in the subsequent count) was, in addition to fraud as set out above, an extortionate credit transaction and was collected by extortionate means in that it was intended from the outset that the defendants MINH, LUU, THACH and VO get back between them, as set out above, a business worth more than twice the money supposedly "loaned," inventory of the food store worth more than twice as much and a note they intended to enforce for twice the money of the "loan," all within a few months. The relation of this fraud, extortion and extortionate credit transaction concerning the Mekong Center food store to the fraud and extortion of the gas station business was to deprive me and my wife of our capital with which we

otherwise could have sought to stop the fraud and extortion that deprived me of the gas station lease and franchise.

538) All of the allegations set out a pattern of racketeering activity as I understand the meaning of that term, and form the basis of my specific complaints seeking damages for the two separate portions of that pattern of racketeering activity as it culminated in the illegal fraud and extortion of my two businesses.

539) When my wife and I met with the defendant VO and his wife at the station on June 2, 1986, to no avail, I informed the defendant VO that I was now going to the Sun Oil Company to get their assistance and also to the police. When my wife and I returned home that day, June 2, 1986, I called Ernie Peele and explained to him what had been happening.

Ernie Peele said he had sent me a registered letter on behalf of Sun Oil Company and I explained that the letter had never been delivered to me. I and Ernie Peele on behalf of Sun Oil Company agreed that we would meet at the gas station on June 5, 1986, at 10 AM. Ernie Peele agreed that it was my SUNOCO station and that he and I together would tell the defendant VO to get out of the station. I said my lawyer would come with me which Ernie Peele agreed was a good idea. I took with me to the meeting as my lawyer defendant MY LINH SOLAND, whom I had retained to be my attorney in these matters on May 28, 1986, after my wife and I were locked out and extorted out of the Mekong Center food store business.

540) At approximately 9:55 AM on June 5, 1986, I and the defendant MY LINH

SOLAND, retained to be my lawyer, met at the gas station. Defendant VO was there at the time. Ernie Peele arrived about five minutes after 10 AM. Ernie Peele, I and defendant MY LINH SOLAND walked into the station office. Immediately the defendant VO addressed the defendant SOLAND in Vietnamese, attempting to interfere with the attorney-client relationship between me and my attorney by reproaching the defendant SOLAND for being my attorney and asking her to be his, VO's attorney, as well as telling an outrageous, slanderous lie that he had given his wife to me to sleep with and what else did he have to do to get the station from me. Defendant SOLAND (this was part of the fraud and deceit) turned on me and tried to make me defensive about this outrageous lie rather than doing her job.

541) When this tactic did not work as planned VO and I began to talk in English at the instruction of defendant SOLAND, when suddenly the telephone rang. This also was an act of prearranged fraud and deception using the phone. When this phone call interrupted the conversation in English between the defendant VO and me, defendant VO answered the phone and then said dramatically to the others that it was his lawyer who was calling and that his lawyer wanted to talk to Ernie Peele. Ernie Peele said he wanted to talk to the man on the phone, who was in reality the defendant THACH pretending to be the defendant VO's lawyer as part of the fraud.

542) When Ernie Peele got on the telephone the man on the other end, who was the defendant THACH pretending to be a

lawyer, asked Ernie Peele why he was still involved with the gas station and me when he, Ernie Peele, had already accepted ten thousand dollars ($10,000.) to settle the matter. Ernie Peele got very angry. He said: "Hold it one minute, hold it one minute." Angrily turning to the defendant VO, Ernie Peele asked him why VO's lawyer had said that VO had told the lawyer that he, VO, had given Ernie Peele ten thousand dollars ($10,000.). VO denied that he had said that very adamantly. Ernie Peele asked the defendant VO why he said one thing and his lawyer another. Ernie Peele then said he wanted the matter straightened out if it took all day. Ernie Peele asked the person on the other end of the phone line if that person could come to the station right away to straighten the matter out. Ernie Peele

hung up. Ernie Peele was very angry. He pounded on the table and said that he was going to wait there until VO's lawyer came to straighten out the matter about his having taken a ten thousand dollar ($10,000.) bribe before he straightened anything else out.

543) While the parties were waiting for defendant VO's "lawyer," the defendant VO did something that frightened me. In the prefabricated metal building of the station, there is a secure storeroom with a heavy steel door and no windows. This room, with the doors shut, was like an isolated chamber which was built by SUNOCO for security purposes. The defendant VO said in Vietnamese that he wanted to talk to me separately. When I asked him what he pointed to the secure storeroom and said he wanted to talk to me in that room.

I started to the storeroom and was already through one of the doors leading to the room when the defendant MY LINH SOLAND told me not to go in the room and asked me and the defendant VO to do their talking outside because, she told me if he went in that room alone with the defendant VO, VO might kill me inside the room and no one could protect me.

544) After this happened and about 10 or 12 minutes after the phone conversation between Ernie Peele and the defendant VO's "lawyer," the defendant THACH arrived at the gas station. Normally the defendant THACH wears an outfit consisting of a short sleeve jacket with 4 pockets of the kind that are commonly worn in Southeast Asia and slacks but the defendant VO did not wear such a jacket. On this occasion, however, the

defendants THACH and VO both wore the 4 pocket blue jackets of exactly the same color, as if it were a uniform. The defendant THACH was carrying a black, hard frame lawyer's briefcase. THACH came into the office of the station, looked around and announced that everybody in the room was a "trespasser." THACH said that the police were coming to lock everyone up. Looking at Ernie Peele, THACH said: "You too, Mr. Ernie Peele, you're a trespasser too." A few seconds later the defendants MINH and LUU arrived at the station in a separate car. They stayed in the car outside the station building, just sitting there, until much later, not taking part in the ensuing discussion with the police.

545) Ernie Peele was very angry and he said that before anything else he

wanted to straighten out the matter of the alleged ten thousand dollars ($10,000.) he was supposed to have taken to settle the matter of my business. "Are you VO's lawyer?" Ernie Peele asked. THACH said: "No, I am VO's brother." Ernie Peele asked if the defendant THACH had just talked to him on the phone and the defendant THACH said yes. Ernie Peele then asked if the defendant THACH had just told him that VO had given him, Ernie Peele, ten thousand dollars ($10,000.). THACH said yes that he had because THANH VO had told him that. Ernie Peele said that the defendant THACH had just told him on the phone that he was VO's lawyer and now the defendant THACH was saying that he was not VO's lawyer and he asked where VO's lawyer was. THACH said that VO's lawyer was busy. Ernie Peele asked the

defendant THACH and VO when VO's lawyer could come and THACH said: "not today, not today." Ernie Peele said that it didn't matter about the lawyer then, he wanted to know when anyone had given him ten thousand dollars ($10,000.).

546) I recalled at this time that back in the evening of April 26, 1986, or thereabouts, right after the defendants THACH and VO first threatened me with death and bodily harm, when I was at my home, the defendant VO had telephoned me and told me that I should not think that I could go to Sunoco and get help from them because he, VO, had already given money to Ernie Peele and Ernie Peele had already taken money from him. You cannot go to him anymore, VO told me, he will not listen to you." He said we already control Sunoco. We've taken care of

everything from the top. I told the defendant VO at that time on the phone that he did not believe this about Ernie Peele.

547) Coming back to June 5, 1986. Ernie Peele then asked me if I had given ten thousand dollars ($10,000.) to Ernie Peele. I said no, that I had not given Ernie Peele ten thousand dollars ($10,000.) but that I had been told by VO as set above that VO had given Ernie Peele money. Is that what he said, Ernie Peele asked, and he turned to VO and asked directly if VO had given him money. VO replied to Ernie Peele: "No." Ernie Peele asked VO why he had told the defendant that he had given Ernie Peele ten thousand dollars ($10,000.) as THACH (pointing to THACH and calling him "this gentleman here") had told him a short while before

on the phone.

548) By this time three police cars with five officers of the Metropolitan police in them had arrived outside. Without allowing any more replies to Ernie Peele, the defendant THACH suddenly threw open the door and walked out, saying to the police that everyone inside is a trespasser and he wanted them locked up. "Please lock them up," he said, "Please lock them up." One of the police officers said: "Wait a minute. Has there been a riot in here?" THACH said to the police officer: "They steal the business; first they sell it to us and now they try to steal the business." THACH then opened his briefcase and started to show the police what I could see was the one dollar contract which he had been forced to sign with threats of violence and the

fraudulent promises. The police told THACH and VO that it sounded like a civil matter.

549) Ernie Peele walked out and told the police his name and that he was the Sunoco representative. The police gave the contract to Ernie Peele and Ernie Peele looked at it and said that this was the first he had seen the contract. The police asked Ernie Peele if he accepted the contract and Ernie Peele said no, that his company did not accept the contract. The police asked Ernie Peele who owned the station and Ernie Peele told the police that the I did. I told the police that they had forced me to sign the one dollar contract by threatening my life and those of my family. The police said it was a civil case and that they could not get involved. The police left.

550) After further conversation that is detailed more fully in following counts and on the advice of the defendant SOLAND who told me that I would be killed if I stayed in the station despite the orders of the area representative Ernie Peele, who ordered me to stay in the station, and on my counsel's advice, I then left the station. This was a further act of fraud and deceit.

MY LINH SOLAND

551) The defendants VO, THACH, MINH, LUU and ARIF, could not have completed their fraud and extortion of the gas station without the fraud and the conspiratorial assistance of the defendant MY LINH SOLAND on this occasion and subsequently.

552) In April I read in the Vietnamese language newspaper The

Vietnamese Washington Post a congratulatory message to MY LINH SOLAND for passing the Virginia bar examination.

553) I first called defendant MY LINH SOLAND on the morning of May 28, 1986, after my wife and I had been locked out of the Mekong Center food business the evening before and the defendants MINH, LUU and THACH, assisted by "cowboys" and a fraudulent use of the police similar to that attempted in the gas station, had defrauded and extorted me and my wife of our Mekong Center food store business.

554) The defendant SOLAND was associated in her practice of law with the offices of a Virginia attorney named Herman W. Lutz, whose offices are at 109 S. Fairfax Street, Alexandria, Virginia. As far as I know she still is. She held herself out to me as well as to my wife as

being free to represent us in the matter of problems with defendants MINH and LUU, VO and THACH in connection with the fraud and extortion of the Mekong Center food store business and in the matter of our problems with THACH and VO in connection with the Sunoco lease and franchise aforesaid, as supported also by MINH and LUU in their actions on June 5, 1986, as aforesaid.

555) While the defendant SOLAND was so holding herself out, and unbeknownst to me and my wife, from some time in April or so, she was, with the lawyer Lutz, with whom she not only had office space, but also on whose letterhead she appeared, representing the defendants MINH and LUU. She never revealed this to me until forced to do so by events revealing this dual agency to me. That did not happen until

August of 1986.

556) When I called the defendant SOLAND on the morning of the 28th of May I called her at the offices of the lawyer Lutz. This call was made at the suggestion of Mr. Tung of the Saigon Market.

557) Later, in connection with the gas station meeting on June 5, as set out above, my mother-in-law called the defendant SOLAND because she had read of her in the message in the Vietnamese language paper. I had then called home and my mother-in-law told me that the defendant SOLAND wanted me to call her at her office.

558) When I first called the defendant SOLAND on May 28th, at the suggestion of Mr. Tung, I told defendant SOLAND about what had happened at the

Mekong Center food store and she agreed to represent me and my wife in connection with this matter. My wife and I went to the office of defendant SOLAND in the offices of the lawyer Lutz and she agreed to represent me and my wife in connection with the Mekong Center fraud and extortion but said that we could pay her later. That same day defendant SOLAND agreed to write a letter to MINH and LUU. My wife and I were led to believe by her statements and actions that, since she was agreeing to represent us that she was going to send this letter as our lawyer and she led us to believe that as a fraud and deceit on which we relied to our detriment. Written for me and my wife, for my signature, we received it the following day from our friend Mr. Tung of the Saigon Market. She did not charge for

this letter. On this occasion in her office the defendant SOLAND undertook to discuss the matter with the defendants MINH and LUU and she said that she was a very good lawyer and that she would make the defendants MINH and LUU vacate the Mekong Center and pay back the fifteen thousand dollars and put me back in the Mekong Center food store until everything was straightened out and the lease I had wanted was signed and then I could pay the defendants MINH and LUU and have the business.

559) On May 29, the same day that I received the draft letter from the defendant MY LINH SOLAND through Mr. Tung of the Saigon Market, I signed the letter and sent it to the defendants MINH and LUU.

560) From May 29 until June 11, I

kept asking the defendant SOLAND, calling her at her office with Lutz every day, asking her what she was going to do. The defendant SOLAND told me that she was my lawyer and it wouldn't even require court action for her to get the defendants MINH and LUU to return the Mekong Center food store. She used a Vietnamese expression, she would "tear MINH's face off." This was a fraud and a deceit. In reality defendant SOLAND and/or the lawyer Lutz were representing the defendant MINH and/or the defendant LUU during this period.

561) In the meantime on June 5, 1986, about 9 AM, my mother-in-law again called the defendant SOLAND and explained briefly to her about the gas station situation and asked her to represent me, HOAI, in the conference at the gas station scheduled

for later that morning. My mother-in-law told the defendant SOLAND that she, the mother-in-law, Mrs. Phan Anh, would pay the fee. Defendant SOLAND asked my mother-in-law formally to have me retain her over the phone. I, HOAI, did and the defendant SOLAND agreed to represent me at the meeting scheduled for 10 AM. I paid her by check on my personal account later that day after the meeting.

562) I went to the meeting by subway and the events described above ensued.

563) In front of the officers before they left the gas station Ernie Peele said in front of the officers and the defendants SOLAND, THACH and VO, that I, HOAI, was the franchisee and lessee of the station as far as Sunoco was concerned. He said also that I, HOAI, was the legal owner of the business. Ernie Peele said

to me, HOAI, in front of the police and in front of the defendants THACH and VO that this was HOAI's station, that I was the legal owner of the business and that the defendant SUNOCO had leased it and franchised it to me, HOAI, that he (Peele) wanted to see me in the station from now on every day and to see me, HOAI, running my business. THACH and VO pointed to the one dollar contract to which Ernie Peele replied that it was not valid as far as Sunoco was concerned because it had not been cleared with Sunoco first as was required and that he could not accept it and if THACH and VO had any claim they would have to settle it between themselves and me.

564) After the police left the defendants VO and THACH remonstrated with Ernie Peele, claiming that I had lied to

him and asking him why he believed me and so forth. Ernie Peele told them again that they would have to settle any such claims between themselves and me. He repeated to me in front of the defendant SOLAND that he wanted to see me in the station, that I was the manager of the station, that he did not want me leaving it again.

565) The defendant SOLAND then talked to me in Vietnamese and contradicted this advice. She told me that she would not be my lawyer unless I left, that I would be killed if I tried to run my gas station and so on. She told me that she would go into the court the next day and get the defendants VO and THACH thrown out of the gas station "by the law," or in any case, no later than Monday, that she was a member of bar in the District of Columbia

as well as Virginia and even in Maryland, that she was a very strong lawyer and the defendants VO and THACH could not escape her, and so on.

566) This was all a fraud and a deceit, misrepresentations designed to induce me to rely upon her to my detriment, which I did. Defendant SOLAND was trying to further frighten me, not help me as my attorney. She was not a member of the D.C. Bar and had no intention of going into court in D.C. and getting any injunction, order or other judicial relief as she represented. Threatening to not represent me unless I disobeyed Ernie Peele's requests and instruction was advice designed not to help me save the station but to lose it to these defendants who were there, including her clients, MINH and LUU.

567) I got in the car of defendant SOLAND and it ran about ten or fifteen feet across the gas station lot when suddenly she stopped the car and said that she had forgotten something and said: "Let me go inside." She asked me to stay in her car and went back inside. About this time the defendants MINH and LUU, who had been sitting in their car on the gas station lot, left their car and went inside the station where a conversation ensued between the defendants MINH, LUU, SOLAND, THACH and VO and Ernie Peele. I could see the people talking calmly. I could see the defendant SOLAND gesturing.

568) The defendant SOLAND came back out from the gas station and got back into the car. She told me that the defendants THACH, VO, MINH and LUU had talked "very bad" about me to Ernie Peele. Then she

said to me that I still had "my life and gas station" and I should go home. We left in her car.

569) After the police had left and before I had gotten into the car of defendant SOLAND, Ernie Peele asked me in front of the defendants VO and THACH, while Ernie Peele was telling me that he wanted me to stay in the station, if I had received a letter sent to me by certified mail by SUNOCO. I said: "What letter?" and said that no I had not received any letter. Ernie Peele asked the defendant VO if he had received the letter. VO replied that yes he had received the letter and he had signed for it and opened it. Ernie Peele said that the letter was sent because he had received a letter from his boss in Sunoco, Vaughn, who was concerned about me not being in the

station. Ernie Peele said that the letter inquired of me why I had not been in the station managing it as the contract required and warned me that if I did not stay in the station and manage it I would be in violation of the lease and the franchise agreement and my SUNOCO franchise and lease would be cancelled. The defendant VO admitted to Ernie Peele and me that he had read the letter and knew what it said but that he had "lost it" (all this that was said to Ernie Peele was said in English). Ernie Peele said that he would call the main office to get another copy sent to me and asked where I wanted it sent. I asked for two copies, one to my home and one to the station. I got the copy at my home two days later. The copy sent to the station was again intercepted and never delivered.

570) The defendant SOLAND drove me home and then my wife and I drove to her office and gave her a check for five hundred dollars ($500.) for each case as an initial retainer, or a total of one thousand dollars ($1,000.) At that time the defendant SOLAND had drawn up a form retainer agreement for the work on the gas station problem and another one for the work on the Mekong Center food store. In them the defendant SOLAND undertook to represent me with regard to the two problems as separate undertakings, each at one hundred dollars ($100.) per hour. Both my wife and I signed these retainer agreements.

571) This was a fraud on the part of the defendant SOLAND, and the telephone had been used to accomplish it. For it was over the telephone that she was

retained and the written retainer contracts and the payments in the office only confirmed the agreements reached over the telephone. She knew in undertaking to represent me and my wife that she and/or Lutz with whom she was in partnership, represented the defendants MINH and LUU whose interests were diametrically opposed to those of mine in both of these matters and she misrepresented that she could represent me in this matter in order to induce me to rely upon her to my harm and detriment, which I did.

572) I had run several gas stations in my career and had shown an ability, often under difficult conditions, to run them profitably and well.

573) In my prior work as a supervisor for the Sun Oil Company, I had gained a knowledge of marketing strategy, pricing

strategy, and of the locations and their worth in the Washington D.C. area.

574) My success in running these prior stations under the market and operating conditions I ran them under, my success in raising the volume of the Pennsylvania Avenue station in the few short weeks I was able to run it, even with the defendant VO improperly controlling the checking account and interfering in the hiring of the help and other crucial decisions, the traffic volume and this location, prior bargaining over this same franchise and location, the historic gallonage and sales figures, those achieved within the few months of operation and those agreed upon between me and the Sun Oil Company and many other factors all indicate that the worth of the gasoline station franchise and lease, and

the business thereof, which was destroyed by the pattern of racketeering activity and the schemes of fraud using the telephones and mail, of extortion and of interference with commerce set out in this count, in terms of its market value, was in excess of one hundred and seventy-five thousand dollars ($175,000.) as a business, without regard for the damage to my business and business reputation generally and without regard to pain and suffering and mental distress inflicted upon me and the members of my family by the threats of death and bodily harm.

575) Throughout the scheme and pattern of racketeering activity set out above, the defendants VO and THACH and ARIF in particular, in connection with their fraud and the fraudulent representations which were essential to

and connected with that fraud, such as that defendant THACH was a banker, that defendant THACH was "the" owner and president of the McLean Bank, that the defendants VO had a large construction business, that the defendant THACH had a large construction business, that defendant ARIF had negotiated on behalf of the defendants THACH and VO and had drafted for them a legitimate contract, free of extortion and fraud, which I had then dishonored, and so forth.

576) In addition, the defendants VO and THACH and ARIF engaged in many acts and representations, many of which are set out in the allegations above, deliberately designed to damage my business and business reputation with SUNOCO. This included such things as the imposition of the parking and business of the hot dog

trailer upon me against my will, the manipulating of the gas station bank account to cause the check for the initial gasoline delivery to be dishonored, the interference with the United States mail to prevent me from receiving the registered or certified letter from SUNOCO, false representations about my business habits and abilities, my absenteeism to SUNOCO, members of the Vietnamese community, to business associates such as my longtime insurance man, and many other such things. The allegations above about the three "cowboys" who confronted me and threatened me with bodily harm is only one example. Another is what was said at the June 5, 1986 meeting at the station referred to above. There are many, many others.

577) For example, at the meeting on

the fifth of June referred to above, the defendant THACH, supported by the defendant VO told the totally outrageous lie to Ernie Peele that I had stolen one hundred thousand dollars ($100,000.) from the sister of defendant THACH, a fabrication for which there is no support whatsoever. Another example is in connection with recordkeeping. The defendants THACH and VO operated out of a briefcase, literally, and kept no records or kept records of such a primitive nature in this and any other of their "scams" or enterprises that they can be said literally to ignore the ordinary prudent requirements of business recordkeeping in all that they do. Yet throughout this pattern of racketeering activity and up to this day, they attempt to cover this up by accusing me with groundless accusations of

theft or destruction of records.

578) The defendant SOLAND, as we have seen from the behavior she exhibited in connection with the outrageous lie of the defendant VO about his having given me his wife to sleep with, though ostensibly representing me, went along with and gave credence to many of these misrepresentations and falsehoods.

579) The defendants MINH and LUU joined in and supported these lies to damage my business and business reputation and good will in connecting with the gas station fraud and extortion on June 5, 1986, and also in connection with the fraud and extortion of the Mekong Center food store business whereby I, HOAI, was defrauded and extorted of my capital for the gas station business.

580) The defendant ARIF participated

in this campaign of lies and slander to damage my business and my business reputation in connection with his fraudulent representation of defendant THACH as a "banker" which was central to the scheme of fraud and extortion. This was in addition to his central participation in the acts of fraud and extortion themselves. Later, on July 14, the defendant ARIF was specifically put on notice by the defendant SOLAND that at that time the defendants VO and THACH were threatening to kill me and yet ARIF continued to lie and cover up his knowledge of the fraud and extortion.

581) The defendants ARIF and SOLAND aided and/or abetted, counselled, commanded, induced or procured this scheme of fraud and extortion and/or its constituent acts or some of them.

582) All of these defendants or some of them, from time to time as set out specifically above or as explained generally did conspire together to defraud and extort from me my gas station business.

583) Subsequently, in the last part of August and continuing through September and October, the defendants VO, THACH and ARIF, at a time when I, HOAI, was taking effective action to recover my business, did commit further acts of fraud using the telephone and the mails to aid, abet, counsel, command and procure this pattern and scheme of racketeering activity, in connection with the attorneys ROSEMAN and OTTMAN, including the filing of fraudulent sham pleadings, further acts and threats of violence and lies, in which the attorneys ROSEMAN and OTTMAN also became

active as actors and participated in events that they should have known were improper.

584) I, HOAI, my wife, my mother-in-law, and my four small children suffered great mental anguish, pain and suffering and emotional and mental distress because of the slanders and lies, the tormenting cruel "mind games" used to deceive me and my wife and destroy my businesses and business reputation, the constant threats of physical violence, bodily harm and death, of false allegations control of the authorities and powerful institutions affecting my businesses and business life, such as the McLean Bank, the Sun Oil Company, D.C. Government agencies, the police, my insurance agent, and others.

585) As part of this pattern of

racketeering activity as set out above defendants VO and THACH and ARIF, aided, abetted and counselled by the defendants MINH and LUU, stole the emblements of ownership of my business name and trade name for the gas station, SUNTECH SUNOCO, INC., and appropriated the same through that corporation to their unlawful purposes by these acts of fraud and extortion alleged above and other such acts and further fraud.

586) It is almost as a matter of course that a dealer and person experienced in the gas station business such as I was before this pattern of racketeering activity was practiced upon me, will obtain a franchise such as this one after the one year trial period. This is the purpose and effect of the thorough screening of applicants for such lease and

franchise businesses which is done by large oil companies such as the Sun Oil Company and which was done by the Sun Oil Company in this instance. The history of such lease and franchise arrangements and statistical evidence shows that in most cases such "trial" arrangements result in ongoing dealer relationships that last upwards of twenty years.

587) In this case the Sun Oil Company had worked with me in the gas station business for years and knew me and my capabilities well. Indeed, the Sun Oil Company had informed me that in my case the one year trial period was only a formality and that there was no question but that I would become a semi-permanent lessee and franchisee, or dealer. To this end I and the Sun Oil Company had negotiated and agreed upon certain target

figures which were included in the contract between us with target dates, that both of us knew could be achieved by me at the site in question.

588) The gas station on Pennsylvania Avenue, S.E., in the District of Columbia is a large station and a high-volume site because of its strategic location on a major traffic artery leading in and out of the city in a neighborhood that "bottomed out" in terms of real estate values declining in the late 1970's and is now steadily increasing in terms of real estate values.

589) In 1980, when the neighborhood of this station had just "bottomed out" in terms of decline in real estate values, I, HOAI, had negotiated to acquire this same station from the SUNOCO dealer who then had it (now a dealer nearby for another

oil company) for a price of one hundred and thirty-nine thousand dollars ($139,000.). At that time I was discouraged by the Sun Oil Company from completing the purchase of the station business though Sun Oil Company had no quarrel with that price but rather solely on the grounds that I need not pay that money to buy from the prior dealer because that dealer was not an efficient dealer for SUNOCO and, despite the fact that the then dealer in this station had been with SUNOCO many years they were hoping that the man would take the exceptional step of easing this dealer out which would enable me to get the station by direct dealing with Sunoco at that time. Sunoco had offered dealerships to me at other sites and locations in addition to the time that I was a Sunoco dealer in Greenbelt, Md.,

where I also was defrauded and extorted of that business as related at paragraphs 684 to 685 and 736 below.

590) Under the prior dealership at the Pennsylvania Avenue Sunoco station, the monthly gallonage was on the average between eighty (80) and eighty-five (85) thousand gallons per month. When I, HOAI, entered into the dealership that was defrauded and extorted from me by the pattern of racketeering activity described herein, the station had been closed since sometime in early January of 1986 or thereabouts, or about three months, more or less.

591) I, HOAI, and the Sun Oil Company, calculating the historical gallonage of this station, and the known quality of my documented experience and abilities, agreed that certainly I could

in three to six months or thereabout boost the gallonage of the station to over one hundred thousand (100,000.) gallons per month.

592) Immediately upon opening the station, even with defendants VO and THACH and ARIF interfering with the financial arrangements and hiring practices of the station, I was able to immediately sell at a rate of forty-five to fifty thousand gallons (45,000. to 50,000.) gallons per month.

593) In a few short weeks before the threats on my life and to my person and my family and the other activities deprived me of any semblance of management control of the station, I, HOAI, was able to get the station gallonage up to over sixty thousand (60,000.) gallons per month, showing that the calculations between Sun

Oil Company and myself in this regard were correct. Sun Oil Company and I were so certain of the correctness of this figure that SUNOCO included in their negotiations and agreement an incentive plan under which, when the one hundred thousand gallons (100,000.) per month figure was reached, I, HOAI, would receive a one thousand dollar ($1,000.) per month reduction in the figure which he was to otherwise pay monthly to SUNOCO under the terms of the franchise and lease agreement, which was set at four thousand and five hundred dollars ($4,500.) per month.

594) As a general rule in the gas station business the gross income from the items other than the sale of gasoline itself runs about sixty percent (60%) of the gross income generated from gasoline

sales. This other income includes the income from mechanical repair work (there are three mechanic's "bays" in the 2305 Pennsylvania Avenue, S.E., station) and from the sales of oil and other fluids, tires, batteries and accessories (TBA) and other incidentals (cigarettes, candies, etc., which in this case were directly fraudulently and extortionately appropriated by the defendants VO and THACH). The defendants herein directly interfered with my hiring of mechanics and establishment of incidental sales. Nonetheless it is possible to estimate within the applicable authorities from industry figures and practices and the past experience of myself and SUNOCO that the figure of sixty percent (60%) is accurate.

595) The Sun Oil Company has a

company wide program under which it establishes at appropriate sites, with its franchisees and dealers, a "C MARKET STORE." Such a C MARKET STORE is a convenience food store or "mini-market," placed in a station site by agreement between SUNOCO and the franchisee or dealer at that location. SUNOCO has discovered, and industry experience proves, that when such a mini-market or C MARKET STORE is installed at a location such as the one at issue here, gasoline sales increase by between thirty-five and forty percent (35 and 40 %).

596) So that in this instance, when the one hundred thousand (100,000.) gallon per month figure was reached as agreed between SUNOCO and me that the location and my good management capabilities would enable to be done, that gas sales would be

increased by a further increment to one hundred and forty thousand gallons (140,000.) per month.

597) So confident were Sun Oil Company and I of these figures that the SUNOCO area manager, Ernie Peele, informed me that he had already planned and initiated the paperwork for the installation of such a C MARKET STORE at the 2305 Pennsylvania Avenue station in three to six months as soon as the one hundred thousand (100,000) gallon per month figure was reached and, further, as was standard, SUNOCO would pay for the building and installation and conformity to code and other applicable regulations of the C MARKET STORE building and that I, HOAI, would not have to pay any additional rent; I would still get the discount of one thousand dollars ($1,000.) per month

and so for the franchise, lease, and the C MARKET STORE, with me making a combined monthly payment of three thousand and five hundred dollars ($3,500.) per month. I would have to stock the store with inventory on my own account under the agreement, which is standard.

598) Based on industry figures and the gallonage and traffic volume figures for the site and the market characteristics of the neighborhood, the minimum gross sales of such a mini-market in this location would be in a range of from twelve hundred to fifteen hundred dollars ($1,200. to $1,500.) per day at the outset of such a business, with a minimum increase over a period of a year of another five hundred dollars ($500.) per day.

599) I, HOAI, and my wife, as our

experience in the Mekong Center food store business, in increasing its daily gross sales shows, from one hundred dollars ($100.) per day to eight or nine hundred dollars ($800. or $900.) per day shows, were well equipped by experience and capability to run such a C MARKET STORE.

600) With the C MARKET STORE and the capabilities and experience of myself or any other similar experienced and equally skilled station operator, and given the high traffic volume at the location and the growth and development of the surrounding areas and the areas connected by Pennsylvania Avenue, S.E., the station, absent the tortious and illegal activities of the defendants named in this count, could be reasonably expected, and the same can be calculated within the confines of

relevant authority, to reach a gallonage figure within two years.

601) Altogether, but for the damages to me, HOAI, my business and business reputation proximately caused by this pattern of racketeering activity engaged in by these defendants named in detail for wrong-doing, namely defendants VO, THACH, MINH, LUU, ARIF, SOLAND, SUNTECH SUNOCO, and attorneys ROSEMAN and OTTMAN, my gas station business, lease and franchise, would have generated gross sales, including the C MARKET STORE sales starting after six months, of, in the first full year of operation, in excess of one million and four hundred and fifty-seven thousand dollars ($1,457,000.), in the second full year of operation, such sales in excess of two million and eight hundred and nine

thousand dollars ($2,809,000.) and in the third year and each year thereafter, in excess of two million and nine hundred and thirty-five thousand dollars ($2,935,000.) without regard to interest due me on any reward herein or any increment of growth or price increase after a two year startup period.

602) Over an average twenty-five years life of a dealership, this particular lease, franchise and dealership would have generated, absent the tortious activity of these defendants, in excess of eighty million dollars ($80,000,000.).

603) It can be shown that the gross profit of such a business, calculable and awardable in this instance under relevant authority as applied to the facts of this case, would be calculable according to the following formulae: gross profit on

gasoline sales equals twenty-four percent (24%) of gross sales; gross profits on oils, other fluids, TBA and mechanical work gross profit equals forty percent (40%) of gross sales; gross profit on C MARKET STORE sales equals thirty-five percent (35%). I know that industry data indicates this.

EXTORTION OF MY BUSINESS INTEREST AND THAT OF MY WIFE IN THE MEKONG CENTER FOOD STORE

604) For clarity I repeat and incorporate herein by reference my statements of paragraphs 1) through 603) above.

605) After the deception and extortion practiced upon me on the evening of May 2, 1986, by the defendants MINH, LUU, VO and THACH at the condominium home of defendants MINH and LUU, in which I was

forced to surrender my "loan" of the certified check to myself for fifteen thousand dollars ($15,000.) to defendants MINH and LUU because of the continuing threats of VO and THACH, so that the defendants MINH and LUU could honor the fifteen thousand dollar bad check that they had given to the American Service Center, I was extremely despondent, as was my wife. I had been deceived, defrauded and extorted into signing a thirty thousand dollar note, and the only thing I had in exchange that I could hope to do anything with was the claim that I had paid fifteen thousand dollars ($15,000.) of the agreed upon twenty thousand dollar ($20,000.) purchase price to defendants MINH and LUU for the purchase of the Mekong Center food store business as part of the transaction.

606) This supposed loan of the fifteen thousand dollar certified check to be paid to defendants MINH and LUU was in itself an act of extortionate credit and extortionate collection of debt in that VO, THACH, MINH and LUU never intended to actually lend me thirty thousand dollars ($30,000.) or even fifteen thousand dollars ($15,000.) as represented, but only to establish a claim against me for the larger amount without ever actually letting me have any real benefit or use of even the smaller amount of money. This was later made evident to me and my wife by further acts of fraud, deceit and extortion by these defendants.

607) Nonetheless, though my wife and I knew that we had been badly deceived, defrauded and extorted, I was determined to see if I could at least get the long

promised lease for the Mekong Center food store business signed now that I had, as I thought, given the defendants MINH and LUU fifteen thousand dollars ($15,000.) toward the twenty thousand dollar ($20,000.) purchase price which I and my wife and the defendants MINH and LUU had agreed upon.

608) At this time my wife and I had access to, within my and my wife's family connections, another five thousand dollars ($5,000.) to complete paying the agreed upon purchase price of the Mekong Center food store business. But I was determined not to pay the last five thousand of the purchase price until I got the long promised lease signed.

609) At the meeting on the evening of May 2, 1986, where I was so badly deceived and extorted, the defendants MINH and LUU, as aforesaid, told me that they were too

upset to sign the lease that evening and said that they would sign the lease tomorrow.

88-765

NO. _____

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

APPENDIX III (Supplemental) PART B

Laurence A. Elgin *
John D. HEMENWAY
4816 Rodman St., N.W.
Washington, D.C. 20016

*Counsel of Record

CONTENTS OF THIS VOLUME OF APPENDIX III

(Supplemental) APPENDIX III

PART B

Partial Text of the Sworn Affidavit of the PLAINTIFF/PETITIONER THANH VONG HOAI of March 25, 1987.

Paragraphs 676) through 804) pp 76-154

(Remainder of Affidavit in previous parts.)

SUNTECH SUNOCO:
AIDING, ABETTING, COUNSELLING, CONSPIRING WITH

676) For full understanding I repeat and incorporate by reference my statements of paragraphs 1) through 675) and continue.

677) When I was first threatened with death and bodily harm by the defendants VO and THACH on the 26th of April, 1986, I did not know of the history of acts and threats of violence on the part of these defendants which has been alleged herein, nor did I know of their reputation for acts and threats of violence within the community, or of their connection with the "cowboys."

678) As the events alleged herein for the period from the time of that first threat on April 26, 1986, until the middle of May, 1986, unfolded, I, as alleged

herein, learned of the reputation of these individuals for acts and threats of violence and of their connections with the "cowboys."

679) On the 15th of May, 1986, when I was confronted by the defendant VO at the station as set out above, and threatened by VO with harm to my family, I was very frightened. This was also the time that VO had with him the large black American whom VO spoke to of being "off duty" as if the man were a policeman and after the defendants THACH and VO had told me that I could not go to the police because they, THACH and VO, controlled the police.

680) The defendant THACH had said to me that didn't I know that VO controlled all of the police in Southeast D.C., from Captain Atkins down to the lowliest patrolman.

681) It was against this background and in the state of mind induced by these events already alleged that I, a day or so after the confrontation with defendant VO on the 15th of May, after getting over being upset and fearful sufficiently to do so, called Ernie Peele the area manager of SUNOCO.

682) Once before I had been defrauded and extorted out of a SUNOCO dealership. (Starting in 1986, SUNOCO switched from calling its dealerships "dealerships" to calling them franchises.) This was in 1982, in the SUNOCO station and car wash alleged about above.

683) The story of that fraud and extortion and the reaction to it by the Sun Oil Company and its employees and their treatment of me and knowledge of my dealing with such things, and their

counsel to me, are relevant here.

684) On that occasion, I had purchased a gas station and car wash leasehold of ten years and had begun to operate a business on the site, in Greenbelt, Maryland, as a SUNOCO dealer. Previously, the operator of the site had been a Mobil dealer. As I became aware that the seller of the leasehold had defrauded me in several ways I tried to deal with it myself. After about twelve or thirteen months, I was threatened by the lessor who had sold me the leasehold in retaliation for my calling to his attention the fraudulent claims that he had made in inducing me to purchase the leasehold. This man eventually threatened me in various ways and I naturally turned to SUNOCO for counsel and advice. SUNOCO recommended a lawyer whom I did retain and

who did work on the matter. Eventually it was decided by me not to pursue the matter further for reasons advised by the lawyer that SUNOCO had counselled me to go to and another lawyer whom that lawyer had recommended. These reasons had nothing to do with the merits of my legal claim but rather the political power of the man doing the threatening who had extorted the business from me and the cost of overcoming that advantage, as I was advised by lawyers. SUNOCO counselled me to go along with the advice of these lawyers and accept the advice, which I did. Part of this legal advice was to help me, in order to avoid having to pay the monthly lease payments on the remainder of the leasehold, which the man who defrauded me was attempting to collect, to file bankruptcy so that that

claim against me as an innocent victim of the fraud and extortion could be defeated. On the counsel of SUNOCO, decided to take this advice of the lawyers.

685) Ernie Peele, the SUNOCO area manager, knew about this earlier experience of mine and others within the SUNOCO organization who worked with me and knew about it back in 1982 when it happened were still working with SUNOCO when the events alleged herein occurred. They still work for SUNOCO.

686) So, on the 17th or 18th of May or thereabouts I called Ernie Peele and told Ernie Peele of the threats of death and violence against me and my familyby the defendants THACH and VO and that these two defendants had tgaken over the gas station and driven me off and had taken over the business.

687) Ernie Peele asked me how the defendants THACH and VO could do this, having met the defendant VO and questioned him about hidden ownership interests and aspirations back on March 21. (See paragraphs 70) to 74) and 724).) "How can he do that, how can he do that?" Ernie Peele asked in this phone conversation, referring particularly to VO.

688) I then explained that the defendant VO had claimed to just be making a loan of thirty-five thousand dollars but he took contreol of the bank account right away and that nmow I could see that the defendant VO had never put the money he claimed in the bank account of the station.

689) Ernie Peele said that VO was my friend and he asked me why he would do

this thing. When I replied that I did not know but that VO claimed tghat the business belonged to him, VO, Ernie Peele asked me why it was that I could not just go and kick him out.

690) I replied that the truth was that I was afraid for my life, afraid if I tried such a thing my legs would be broken or I would be killed or my family harmed.

691) I then asked for the help of SUNOCO in telling VO to get out of the station and cease the extortion and threats and fraudulent claims.

692) Ernie Peele pointed out that VO was supposedly my friend and that I had brought him into the station operation to which I had responded that I had been tricked and had thought VO was my friend but now that he had taken the station over

and threatened my life, he was no longer my friend and that I now needed SUNOCO's help. I stressed that if I went into the station again by myself, I would be killed or harmed.

693) Ernie Peele concluded the conversation by saying that the only thing he could do would be to write me a formal letter emphasizing that the station was mine and that I had to be there to operate it or I would be out of compliance with the lease and franchise agreements and they would be terminated. Ernie Peele did write this letter as stated above but it was tampered with and intercepted by the defendant VO.

694) A week or so later I again called Ernie Peele and asked him if he, Ernie Peele, and SUNOCO, had found any way to help get the defendant VO out of the

station so that I could get my station business back and operate it.

695) Ernie Peele stressed that he had said the only thing he and SUNOCO could do was send a letter saying that I had to be at the station all the time and that it was my station and my business, which he said, SUNOCO had done through Ernie Peele's supervisor, Harry Vaughn, to whom Ernie Peele had recommended the letter after our last phone conversation. The supervisor sent the letter.

696) I then asked for the help of a SUNOCO lawyer to straighten it out and Ernie Peele told me that it was my business operation, not SUNOCO's, in which I had gotten VO involved, and that I would have to straighten it out. I responded that I knew it was my business but I needed help to straighten it out. I could

not go in the station without getting harmed or killed unless SUNOCO would help me. At the end of the conversation Ernie Peele said he would see if there was anything else he could do. This was about May 24th or 25th.

697) On the 28th of May as stated above, in connection with the extortion and lockout at the Mekong Center, and on the advice of Mr. Tung, I called defendant MY LINH SOLAND and she said she would write the letter as I asked in that matter.

698) In the Vietnamese paper I had seen an ad that a Vietnamese lawyer named George Tran Duc was licensed to practice in D.C. About June 1, when I was eating at the Queen Bee Restaurant on Wilson Boulevard near the Mekong Center, the Vietnamese lawyer George Tran Duc was

eating there also at a different table. He called me over to his table and told me that he had heard that I was having trouble with my gas station and I agreed.

699) George Tran Duc told me then that he was licensed in D.C. and had an office there and was the only Vietnamese lawyer so licensed in D.C. George Tran Duc told me about cases he claimed to have won on behalf of other members of the Vietnamese business community. Later I discovered these claims to be fraudulent, but at the time I believed him and retained George Tran Duc who then took me over to an office on K Street in D.C. and promised to straighten the matter out for me right away, taking a fee from me of five hundred dollars ($500.00). George Tran Duc actually did nothing on the case and because of this I finally wound up

retaining defendant MY LINH SOLAND for the meeting on June 5, at the station with Ernie Peele and the defendants THACH, VO, MINH and LUU.

700) The events of the June 5 meeting, which was the other thing that Ernie Peele said he would look into doing, are set out above.

701) A meeting of the Northern Virginia Sunoco dealers was scheduled at the Howard Johnson Motor Hotel on Route 1 in Alexandria for June 20, 1986. About a week before the meeting Ernie Peele and Harry Vaughn of SUNOCO, the latter being Ernie Peele's supervisor and boss who had written the letter referred to above, invited me to come to this meeting and of course I agreed to go.

702) Between the meeting at the gas station on June 5, 1986, and the

invitation to the meeting of the Northern Virginia Sunoco dealers at the Howard Johnson on June 20, I had occasion to talk several times with Ernie Peele, who revealed some of the slander and lies that had been told to him concerning me by the defendants THACH, VO, MINH and LUU at the gas station on June 5, after I had been led by the defendant SOLAND into her car and left there. She, the defendant SOLAND, had returned to the station office at the time that the defendants MINH and LUU had just entered also. One slander was that I had stolen one hundred thousand dollars ($100,000.) from the sister of THACH and that the "Vietnamese community" hated me and so forth, in short the kind of thing that tortfeasors of this sort do to tell lies about others before similar things which are true are said about them.

703) It seemed to me that Ernie Peele was giving too much consideration to these fabricated slanderous statements and accusations, so I pointed out that I had known Ernie Peele some time and Ernie Peele ought to know better than to listen to such nonsense.

704) I also talked on the phone during this period to Harry Vaughn, John Pendergast, and Mr. Earl the terminal manager, all SUNOCO personnel and explained what had happened and that I was seeking SUNOCO's help and assistance in regaining control of my business after the fraud and extortion aforesaid. By the time of the invitation to the dealer's meeting I had overcome whatever distrust had been created by this fraudulent tactic of slander and calumny on the part of the defendants VO, THACH, MINH, LUU and SOLAND

at the meeting on June 5. I did not know during all this time that the defendant SOLAND and/or her partner Lutz had been attorneys for the defendants MINH and THACH for some time and did not learn this until much later.

705) Throughout this time and the ensuing time until I had discovered the dual agency and fraud of the defendant SOLAND the defendant SOLAND did advise me not to talk to SUNOCO and SUNOCO personnel. I did nonetheless continue to talk to personnel I knew of the Sun Oil Company.

706) During this time before my attendance at the dealer's meeting at the Howard Johnson's on Route 1 on June 20, 1986, I had formulated a plan to take back over the business which would require some but not very much support from SUNOCO and

suggested it to Ernie Peele and Harry Vaughn in outline and suggested that they could discuss it at the meeting. I lined up the capital necessary for my plan, which was to go into the station with some of the SUNOCO personnel and an inventory specialist, whom SUNOCO could obtain, and take an inventory of what stock VO had put in the station, ask to see evidence of what, if any, money VO had actually deposited in the station account from the checkbook or bankbook records and then pay off VO for the exact amount of his investment. It was crucial to this plan that at least one of the SUNOCO personnel go with me and tell VO to leave in order to eliminate the pretense of legitimacy on VO's part pursuant to the fraudulently extorted one dollar ($1.) contract.

707) At the dealers' meeting and on

the telephone several times thereafter I had discussed this plan with Harry Vaughn, Ernie Peele and other SUNOCO personnel. They agreed with this plan and SUNOCO agreed to do its part. On each occasion, however, that I and SUNOCO personnel were close to executing this plan, I was deflected from doing so, as were the SUNOCO personnel by the defendant SOLAND, whom neither I nor the SUNOCO personnel realized at the time was in league with the other defendants as set out more fully below. I took defendant SOLAND's advice during this period and the SUNOCO personnel continued to advise and counsel me to accept my lawyer's advice.

708) In August, at Arlington Courthouse, on the 18th, I saw defendant SOLAMD and/or her partner Lutz, representing the defendants MINH and LUU

ina a case in which the defendant SOLAND and/or her partner Lutz had been representing MINH and LUU for a long time.

709)After this discovery, I forthwith discharged the defendant SOLAND as my counsel. Within days of discharging the defendant SOLAND, I had retained new counsel, John D. Hemenway, Esquire, of the District of Columbia bar. Very quickly my new counsel had me contact Ernie Peele by telephone to work out the details of executing the plan which had been delayed by defendant SOLAND. Ernie Peele said to me then: "Anytime that you go in there to take back your gas station, I will be with you. That's your gas station." This plan was backed by Harry Vaughn and the other SUNOCO poersonnel.

710) On Wednesday, August 20, 1986, I went with the grown son of my new counsel,

David Hemenway, and picked up the documents in my case from defendant MY LINH SOLAND that I had given her in connection with the case. In the meantime I had started another body shop business in partnership with another Vietnamese, Mr. Doan. After I had terminated the services of defendant SOLAND the defendant SOLAND, I have it on information and belief, informed some of the other defendants of that termination of her services and that she would no longer be able to help stop me and SUNOCO from attempting to take back the illegally taken station and so word got to defendant THACH.

711) On Friday, August 22, 1986, I called Ernie Peele on the telephone and arranged to meet with him the following Monday. This was before I had even met

with my new counsel, John Hemenway. Ernie Peele said he had appointments that day in Northern Virginia so we agreed to meet at the Howard Johnson on Route 1 in Alexandria, Virginia so that Ernie Peele might fit it into his schedule.

712) On Saturday, August 23, the defendant THACH called me when I was at this new body shop business in Arlington, Virginia. THACH told me over the phone that he and the defendant VO wanted to talk to me seriously about the gas station. He said it was a very serious matter. I asked what was serious. And THACH replied that they needed to have a serious talk about the gas station and they did "not mean to hurt" me. THACH said, that he and VO had to talk to me. I said go ahead and talk because I was not leaving the body shop. THACH said, "We

talk very serious and we not hurt you." I replied that if they were serious, come to see me at the body shop and I will talk to you both. The defendant THACH asked what time and the I said I would check how the work was going and call THACH back and give the time. Later I called THACH back I said I was free between 9 and 9:30 that evening and that they could come to the body shop, at 4000 N. 5th Road in Arlington, Virginia, and meet him there. THACH said, "We will meet you there."

713) At 9 or 9:30 that evening the defendants VO and THACH came to the body shop but refused to come inside. They told me that they would meet me at the Cafe Italiano, a restaurant nearby. They went to the restaurant where the defendants THACH and VO told me that they would pay me for the gas station business

an amount of twenty-five thousand dollars ($25,000.) and that they would give me back his thirty thousand dollar ($30,000.) note which they had defrauded and extorted me into signing and that they would also help me get into whatever new business I wanted to get into. I said I was not interested in any new businesses at this time. (The only thing that I wanted was to get the plan executed to recover the gas station the following Monday.) I said I would talk to my wife and attorney and would come to the gas station Monday and let them know. At this time the defendants THACH and VO told me that they would not be at the gas station on Monday morning because they would be at the Fairfax Courthouse on Monday in the morning. When I asked why they said that they had to go there because of people who

were trying to steal hundreds of thousands of dollars from them. This was a lie and a fraud.

714) On Monday, August 25, my new counsel drew up a document for signature by Ernie Peele, which my counsel decided to entitle "NOTICE TO SURRENDER PREMISES." This document of one page asked the defendant VO to surrender the premises and was certified by my signature and contained at the bottom a statement for signature by Ernie Peele that he was the SUNOCO company representative and as such declared me to be the holder of the lease for the Sunoco gas station at 2305 Pennsylvania Avenue, S.E. and the only person authorized to be in possession of the premises.

715) On the morning of Monday, August 25, 1986, I went with my new counsel, John

D. Hemenway, and a grown son of his, David Hemenway, and Ernie Peele at the Howard Johnson's on Route 1 in Alexandria just prior to the luncheon hour. We went over the drafted notice and my new counsel and Ernie Peele and I signed the notice to surrender the premises. I truly believed that in front of two Americans, like my counsel and my counsel's grown son, the defendant VO would not threaten me unless he could get me alone as he had attempted to do on June 5. Further, I felt that when presented with this formal notice and a request from me, accompanied by these witnesses, to begin taking the inventory, the defendant VO would comply until he and the defendant THACH could get together and plan some additional fraud. Of course, I realized that the defendant SOLAND, being a dual agent with those who were

conspiring against me would have informed the defendants MINH, LUU, THACH, VO and ARIF by now of my plan. Both I and my counsel asked Ernie Peele to go with us to the station that day and ask the defendant VO to leave. Despite his promise of the prior week the SUNOCO representative Ernie Peele said he could not go with me and my attorney or my attorney's son at this time. Ernie Peele said he had to go to his appointments in Northern Virginia and that he would drop by the station the next day and see how we were doing.

716) From the Howard Johnson's, accompanied by David Hemenway, I went to the gas station on Pennsylvania Avenue, S.E., arriving at about 2 PM in the afternoon. We were in the car of one of the Hemenways, a car then not known to VO and THACH. I observed some five people

out of the people that defendant VO had hired, including some of VO's relatives, were at the station but I did not see VO in the office or on the station lot. So we left without my being seen or identified.

717) Around 4 PM or so together with John Hemenway and his son I returned to the station in the car of the Hemenways. Attorney John Hemenway got out of the car and asked for the defendant VO. The four or five people who were there came to John Hemenway and when he asked them for the defendant VO they said he was not there and he was away. John Hemenway asked where the defendant VO was and they said that they did not know where VO was but that he could ask the manager. They informed John Hemenway that Mr. Hiep was the manager and when John Hemenway spoke

to Mr. Hiep he gave to Mr. Hiep the "NOTICE TO SURRENDER PREMISES."

718) But Mr. Hiep refused to acknowledge receipt of the NOTICE TO SURRENDER PREMISES when requested by the attorney Hemenway as did all others present. They said that the defendant VO was not available. There was an off duty police officer there in his uniform when the parties arrived. Later other officers came. So all of the activity on this occasion was observed by one or more police officers. There were no accusations of violence or threatening behavior at the time. At least one police officer was present and observing from the moment of my arrival and the arrival of my counsel and my counsel's son on through the events that followed.

719) On this occasion my attorney

spoke with the defendant VO who, contacted by beeper, called the station and claimed then and later to be in Canada and not at the Fairfax Courthouse.

720) The defendant THACH came and pursued his usual tactics of telling outrageous lies about me and loudly announced immaterial things such as that I had had the bankruptcy in Prince George's County, Maryland, at the time of the Greenbelt Sunoco station fraud and extortion.

721) The employees of the station who had been brought in by defendants VO and THACH when they fraudulently excluded me from the hiring function of his station eventually left.

722) The defendant ARIF showed up, examined the notice to vacate, talked to the police and then entered an agreement

with me and my attorney to take the long sought inventory, beginning the next morning, which agreement was subsequently confirmed by me and my counsel and by defendant ARIF. Defendant ARIF did insist that Ernie Peele be there the next day when the inventory was to be taken. My counsel, John Hemenway and I agreed that Ernie Peele should be there. Defendant ARIF entered into a settlement agreement at this time with Mr. Hemenway that ARIF's clients THACH and VO, would abide by the word of Ernie Peele. This was a further fraud and deceit by the defendants ARIF, THACH and VO as they had no present intention of abiding by such an agreement.

723) I authorized changing the locks on the station. The son of my counsel, David Hemenway, and another man spent the night in the station.

724) The following day, after some further threats and extortion attempts by VO and his hirelings, Ernie Peele did come and even recounted for the defendant VO very patiently the conversation which they had back in March when the defendant VO had spoken with Ernie Peele at the Howard Johnson's and assured him that there was no hidden equity interest that he Vo had in the gas station franchise or business or aspirations to be more than a friend who was lending the required thirty-five thousand dollars ($35,000) to help me get started the business.

725) This was the way it seemingly ended, with me seemingly back in possession of my station in accord with the plan that I had worked on with the Sun Oil Company and its personnel and my own attorney.

726) In violation of the agreement to abide by the word and decision of the SUNOCO representative Ernie Peele, the defendant's VO and THACH hired the attorneys ROSEMAN and OTTMAN and filed a sham pleading based on the lies, frauds and deceits outlined herein in the Superior Court of the District of Columbia and did so with the awareness that the pleading was a sham based on lies and falsehoods and ignored frauds and extortions and the pattern of racketeering activity I complain about. This court action, Civil Action No. 7075-86 in the Superior Court of the District of Columbia, was filed on August 28 and named as defendants me, the Sun Oil Company and my attorney, John Hemenway, Esq. and his son, David Hemenway.

727) The defendant VO, and attorneys

ROSEMAN and OTTMAN arranged a TRO hearing the next morning, at which the attorneys OTTMAN and the defendant ROSEMAN repeated many of the fabrications of the defendants THACH and VO alleged herein, such as that VO had put up over thirty-five thousand dollars loaned it to me to start up a gas station business. VO didn't testify at all.

728) Throughout their dealings with me as set out above the defendants VO and THACH had repeatedly told me that they would "burn my life" because they had the money and they could buy anything, including American justice. They told me that they would deprive me of money so that they would have it and I would not and I would not be even able to hire lawyers to fight them. 729) On this occasion they demonstrated this by

fabricating lies about my lawyer, John Hemenway and his son; that the latter had threatened violence against the defendant VO and his employees. The opposite was true: it was VO and his employees who had threatened violence against me and my counsel's son, in reality. This was part of a preconceived plan to deprive me of counsel and representation by accusing my attorney of something that would require him to witness to defend himself and asking the court have him excluded from being my attorney at the 11th hour before the hearing. In doing this the attorneys OTTMAN and ROSEMAN used an obsolete copy of the ABA canbnons that did not contain the provisions designed to protect against this tactic. This is the kind of deceit and fraud that was practiced even by defendant VO's counsel in this proceeding

in the D.C. court. On belief Attorney OTTMAN used a bar number in these proceedings not belonging to him or anyone in the firm with which he is affiliated. Throughout my dealings with the Sun Oil Company up to the point I had repeatedly asked SUNOCO personnel to get one of SUNOCO's lawyers involved to help me, but this request had always been refused and I was told that I would have to get my own counsel.

730) For this hearing the Sun Oil Company requested that my counsel also represent them, which he did, at my expense. My present counsel conferred with Ernie Peele and the police officers and Ernie Peele joked about the crude extortion attempt of the defendants THACH and VO.

731) At this hearing there was

undisputed testimony from me, John Hemenway and David Hemenway as to violence and threats of violence on the part of the defendants VO and THACH, contested only by statements of attorneys OTTMAN and ROSEMAN who were acting as counsel and were not sworn. The attorneys for defendant VO used their questions to insinuate that Ernie Peele had taken a ten thousand dollar bribe, the aforementioned lie of THACH and the judge refused to let Ernie Peele on the stand to repudiate it.

732) At the hearing my counsel stated to the court that the case was ultimately a RICO case in all probability and a suit such as this would have to be brought.

733) As a result of this TRO hearing, defendant VO obtained a Temporary Restraining Order giving him possession of the station again for 10 days.

734) After the hearing Ernie Peele, who was the only one there for Sun Oil Company discussed with me and with my counsel what would have to be done next to fight these racketeering activities.

735) Up to this point the Sun Oil Company and all its personnel had sympathized with me and, when pushed, had stood by my side, even asking my counsel to represent them. They had told me I had to act on my own to get my station back. When I formulated a plan to do so, they encouraged me to execute it and went along with it in every way, saying they would stand behind me, expressing surprise and even impatience repeatedly that I did not just go into the station and throw out the defendant VO.

736) In the earlier fraud and extortion against me as a Sunoco dealer,

in Greenbelt, Maryland, the Sun Oil Company had recommended a lawyer to me. When that counsel and another counsel to whom that first counsel had referred me had urged me to abandon the fight against the fraud and extortion, the Sun Oil Company told me to follow counsel's advice. The Sun Oil Company urged me to follow counsel's advice and conferred with my counsel closely when I was represented by the dual agent, defendant MY LINH SOLAND. The duality of her agency and the conflict of interest she was involved in, was unknown to the Sun Oil Company at the time just as it was unknown to me, to my best belief.

737) Now, however, as the 10 day Temporary Restraining Order from the Superior Court expired of its own terms, no extension of it ever having been

applied for, the Sun Oil Company, who in the TRO hearing had been represented by my counsel and stood by his side, without notice to or counsel with me, began to aid, abet and counsel the racketeering acts of the defendants VO and THACH, even as their own counsel acknowledged that SUNOCO still regarded me as their franchisee and lessee.

738) The temporary restraining order (TRO) of the Superior Court expired on its own terms ten days later and no attempt was made by VO, the plaintiff in that action, to extend or to follow on with a preliminary injunction. Indeed the complaint of VO in this Superior Court action asked for no injunctive relief whatsoever.

739) Simultaneously, without any notice to my counsel or me, its admitted

franchisee and lessee, the Sun Oil Company made an agreement with the defendant VO through attorneys ROSEMAN and OTTMAN to exclude me from my own station and place the defendant VO in my stead as a reward for VO's racketeering activities as to which the Sun Oil Company was on notice, including the nonexistence of the fraudulently claimed thirty thousand dollar ($30,000.) loan, the threats of violence and death and the outrageous slanders of VO, THACH, MINH and LUU.

740) The Sun Oil Company knew of the peaceful nature of the taking back over of the station by me and that the officers who had been there the whole time supported me and my counsel's version of the peaceful nature of the takeover, and of the agreement, as the Sun Oil Company had discussed for months with me to abide

by Ernie Peele's decision, take the inventory and pay VO for his investment. Thus the Sun Oil Company knew of the sham nature of this pleading by VO and that it was a breach of the agreement that he and his counsel had entered into.

741) But the Sun Oil Company cooperated with these defendants to aid and abet the pattern of racketeering activity in which the defendants VO, THACH, MINH, LUU and ARIF were engaged. I was frankly appalled and dismayed by the obvious abetting and counselling in which the defendants and the Sun Oil Company made use of the telephone and the mails in talking and corresponding with each other and eventually with me and my counsel.

742) The Sun Oil Company deeply disappointed me by the way it appeared to aid, abet and assist the harmful-to-me

racketeering activity of VO and others, favoring racketeers over me.

743) Subsequently, the Sun Oil Company committed a number of other acts that were hostile to me, their franchisee, favoring a racketeer.

744) The Sun Oil Company had known me and my excellent training, skills and ability as previously mentioned from their work with me and as an employee-dealer. I passed easily their rigorous examination for potential franchisees and lessees. The defendant VO, by contrast, has no qualifications such as those the Sun Oil Co. requires of franchisees and dealers and indeed it does not appear that he has ever in his life run a business successfully, if by that one means running a business without engaging in strong arm activities and criminal activities.

745) Nonetheless, rather than continuing to support or say that they would fully support me in the face of this clear pattern of racketeering activity, the Sun Oil Company committed an act of aiding and abetting and counselling the racketeering activities of the defendants VO, THACH, MINH and LUU and ARIF by subsequently trying to make a "silk purse out of a sow's ear" by giving defendant VO special training and sending him to school, all using telephones and interstate mail so as to assist in defrauding me of what they knew to be my lease and franchise and filling station business.

746) In another such act the Sun Oil Company, I understand on best information and belief, has undertaken all the preparations to give the follow-on

franchise and dealership of this gas station lease and franchise arrangement to the defendant VO with the backing of defendant THACH rather than honor the commitment it made at the outset to give this station to me as a known quantity and make of the one year trial a mere formality. This was done with telephones and mail, even as the defendant VO has tried to sell "his" business for one hundred thousand dollars ($100,000.) and with the intent to interfere with commerce by interfering with the contract of the Sun Oil Company which aids the extortion which had that effect.

747) Another such act by the Sun Oil Company was perpetrated by the Sun Oil Company on January 22, 1987, by United States mail. By a certified mail letter of this date, addressed to me, HOAI, but

sent by certified mail to David Hemenway, the son and sometime assistant to my counsel John Hemenway, the Sun Oil Company, citing a summary of the Petroleum Marketing Practices Act, notified me that it is going to "non-renew" my franchise effective April 27, 1987," and that it will expire on March 31. (This is a little bit of deceit by mail in itself as it actually expires one year from April 10, 1986.) As a reason the Sun Oil Company actually wrote the following: "the operation of the station has not met Sun's expectations or standards. There has been a significant drop in the historical volume of gasoline sold from this station. I believe this is due in large part to the distractions caused by the dispute you are having with Thanh Van Vo."

748) The Sun Oil Company first

encouraged me to stand for my rights and contest VO, then did not help me, conspired with THACH and VO and other defendants herein in their pattern of racketeering activity when clearly put on notice as to the same, trained the perpetrator of the racketeering activity in order to attempt to make up for his lack of qualifications to run such a business, interfered with the contract they had with me as franchisee, using the telephones and the mails to aid and abet and counsel fraudulent activities and interfere with commerce, and then blames the resulting drop in the gallonage of the station on me, their franchisee, using it as an excuse, via the U.S. mail, to further aid and abet these activities by VO and THACH. Having deprived me of my livelihood in league with vicious and

violent racketeers the Sun Oil Company then seeks to aid and abet these racketeers further by using the product of their racketeering activity, its interference with commerce, to harm me even further.

749) Additional notice was given to the Sun Oil Company of my intent to pursue the defendants VO, THACH, MINH, LUU and ARIF for their racketeering activity under the RICO statutes and the reaction of the Sun Oil Company was that they were only interested in pumping gas and did not want to get involved in a fight between Vietnamese.

750) Thus the Sun Oil Company aided, abetted and counselled some of the defendants in their pattern of racketeering activity bringing great harm to me, their contractual franchisee, and

apparently conspired with some of the other defendants in their pattern of racketeering activity, to the extent of my best information.

751) When the Sun Oil Company counsel was advised of the criminal nature of the activities of some of the other defendants specifically he, while reasserting that as far as SUNOCO was concerned HOAI was still the contractor, asserted A) that SUNOCO was only interested in pumping gas and B) that if I ever filed suit against SUNOCO under these, RICO, statutes that SUNOCO would retaliate against me in a way that he said he could not specify or he would "get in trouble."

752) By many acts, statements and holdings out, the Sun Oil Company when it was on notice as to the truth concerning the racketeering activities and the lies

of the defendants VO, THACH, MINH and LUU and ARIF aided, abetted and counselled these defendants and/or conspired with them rather than act in accord with what the Sun Oil Company knew or had reason to know was true all to the damage of the general business and business reputation established by me and thereby the Sun Oil Company added to my pain and anguish and mental and emotional anguish and suffering of me and my family, reinforcing the threats against our lives and safety.

MY LINH SOLAND: AGGRAVATION: AIDING AND ABETTING: ADDITIONAL WIRE FRAUD

753) I shall repeat herein and incorporate by reference paragraphs 1) through 752) above for complete understanding.

754) As stated above the defendant MY LINH SOLAND, as a result of the need for an attorney on an emergency basis for the meeting at the SUNOCO gas station at 2305 Pennsylvania Avenue, S.E., in the District of Columbia on June 5, 1986, was retained by me and my wife as aforesaid and after that meeting, on the same day, my wife and I went to the offices of the defendant MY LINH SOLAND, in the offices of Attorney Lutz, as set out above, and entered into two separate retainer agreements with her, paying a five hundred dollar ($500.) retainer on each of the two retainer agreements, one for representing me in connection with the extortion and takeover of the gas station lease and franchise for the SUNOCO station at 2305 Pennsylvania Avenue, S.E., and doing something immediately to get the station back and

the other for representing me and my wife against the defendants MINH and LUU in connection with the fraud and extortion by those two defendants from me and my wife of the business we had built up in the Mekong Center food store in reliance on the agreement of the defendants MINH and LUU. Both retainer agreements were on standard form retainer agreements, to my best understanding and belief.

755) In agreeing to represent me and my wife in these matters, defendant SOLAND did not reveal that she and/or her partner Attorney Lutz had, for some time, been representing the defendants MINH and LUU, who were the principal actors in the fraud and extortion against me and my wife by which my wife and I lost the business built up in the Mekong Center food store, and lost as well the inventory we had

purchased for that business and who also were involved, as defendant SOLAND knew, in the fraud and extortion from me of my gas station lease and franchise.

756) Defendant SOLAND knew of the involvement of defendants MINH and LUU in the fraud and extortion of the gas station because that very day, June 5, 1986, on which she had me and my wife sign the retainer agreements and took our initial retainer fee, she had been at the gas station as described above. She went into the office without me, her client, being present and she observed and participated in the discussion whereby as part of the staged fraud and deception in connection with the extortion of the gas station business, her other, conflicting clients, MINH and LUU, slandered me -- HOAI -- her client and falsely, as she knew.

757) This agreement to represent me and to a lesser extent my wife in these matters was agreed upon over the telephone in essence and then reduced to writing and signed. The same constituted a fraud by the defendant MY LINH SOLAND in that she falsely represented that she intended to represent me as my attorney, knowing that she could not do so herself or in any way through herself or partner as she represented the very people who had wronged me. She had no present intention at the time of truly representing me and/or my wife and ceasing to represent the defendants MINH and LUU. She intended that my wife and I would act upon this false representation to our detriment and we did.

758) Defendant MY LINH SOLAND continued this dual agency and conflict of

interest from the day of May 28, 1986, when, as set out above she drafted a letter for me to be sent to her clients MINH and LUU until August 18, 1986, when I went to the Arlington Court House as set out above and discovered her dual agency and conflict of interest as set out above and then confronted her with it.

759) Throughout this dual agency and conflict of interest the actions and words of defendant SOLAND aided abetted and counselled the fraud and extortion of the defendants MINH, LUU, THACH and VO against me and my wife and against my business of the gas station lease and franchise aforesaid and the business that my wife and I had at the Mekong Center food store

760) Throughout this dual agency and conflict of interest of the defendant SOLAND, as in the incidents alleged above,

such as when defendant VO fabricated the outrageous lie that he had given his wife to me to sleep with, the defendant SOLAND betrayed the interests of her client, this is, my interests and my wife's, to our harm, and served the interests of the defendants in defrauding and extorting my two business interests from me and my wife.

761) From the time of the June 5, 1986, meeting at the gas station on until the duality of her agency was discovered by me, defendant SOLAND aided and abetted and counselled the pattern of racketeering activity of the defendants MINH, LUU, VO, THACH and ARIF by counselling me to stay at home and do nothing and give up all means of livelihood. This aggravated the harms done by these other defendants in their pattern of racketeering activity as

well as aided and abetted them, while the defendant SOLAND was counselling one or more of the defendants in the same.

762) From the time of the Northern Virginia Sunoco dealers' meeting at the Howard Johnson's on Rte. 1 in Alexandria, Virginia, until a meeting that was held in the offices of defendant ARIF on July 14, 1986, and was attended by defendants VO, and (quite unexpected to me) THACH, as well as me and defendant SOLAND, the defendant SOLAND twice interfered with oral contracts or agreements between me and the Sun Oil Company to enter the gas station and work together to get the defendant VO out of the station and take an inventory and pay off the defendant VO for inventory he had purchased and cash he had actually put up.

763) On these occasions, and

throughout her dual agency and conflict of interest, the defendant SOLAND falsely represented to me that at that time the Sun Oil Company was trying to harm me and would not help me. The Sun Oil Company, so far as I presently knows, did not participate in this pattern of racketeering activity until later in the manner set out above. Ultimately the actions of this defendant were in part responsible for the Sun Oil Company's decision to turn against me to aid and abet and counsel the pattern of racketeering activity engaged in against me.

764) Throughout these actions and activities of the defendant SOLAND, from the initial oral hiring on, much of the business and false representations were conducted using the telephone.

765) As part of her fraud in preventing me from effectively working with the Sun Oil Company to end the illegal occupation by the defendants VO and THACH of the gas station, the defendant SOLAND wrote, on two occasions, letters to SUNOCO which were designed to achieve delay by fraudulently purporting to be counsel's letters designed to help me regain my gas station business when in fact they were designed to create delay and encumber me in my primary goal to regain my gas station business.

766) Defendant SOLAND engaged in a conspiracy with the other defendants MINH, LUU, VO, THACH, and ARIF to defraud, by wire and mail, and extort me of my gas station business and to interfere with commerce to my harm.

767) Defendant SOLAND interfered with

commerce by her fraudulent activity which did me considerable harm.

768) Defendant SOLAND falsely and fraudulently deprived me of valuable legal services vital to me by her participation in, aiding and abetting and counselling of, or conspiracy with other defendants to accomplish, a pattern of racketeering activity against me which effectively took my gas station lease and franchise from me by fraud and extortion and prevented me from curing that fraud and extortion by effective action at a time when such effective action and effective legal representation were essential.

769) Using the telephone, the defendant SOLAND defrauded me by fraudulently and deliberately leading me to believe that she had filed a lawsuit on my behalf to recover my business interest

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

that I had built up with my wife in the Mekong Center food store when she had not filed such a suit, by representing that I did not need to file such a suit, in fact, I did, and by falsely representing that she was working with other lawyers on the recovery of the extorted gas station business when she was not.

770) Using the telephone, the defendant SOLAND defrauded me by fraudulently and deliberately leading me to believe that she had filed a lawsuit on my behalf to recover my business interest that I had built up in the gas station lease and franchise I had obtained with the Sun Oil Company at 2305 Pennsylvania Avenue, S.E., in the District of Columbia when she had not filed such a suit, by representing that I did not need to file such a suit when I did, and by falsely

representing that she was working with other lawyers on the recovery of the extorted gas station business when she was not.

771) Even after I had discovered the fraud perpetrated against me by the defendant SOLAND in claiming to file suits she had not in fact filed and in representing that suits should not have been filed when they should have been, the defendant SOLAND further defrauded me over the telephone by representing that the defendant LUU was judgment proof and otherwise trying to prevent me, as her client, from pursuing the proper remedies in my cause by fraudulent representations.

MICHAEL ARIF: AGGRAVATION: AIDING AND ABETTING, COUNSELLING, PARTICIPATING IN FRAUD: ADDITIONAL WIRE FRAUD

772) I refer to all the statements made previously from paragraphs 1) through 771) above and incorporate them for understanding.

773) By his use of the telephone and the mails the defendant MICHAEL ARIF participated in the fraud and extortion of both the gas station franchise and dealership and the Mekong Center food store from me as set out above as part of the pattern of racketeering activity complained of and also interfering with commerce.

774) The defendant ARIF aided and abetted and/or counselled the same to my best belief and information.

775) The defendant ARIF participated in the fraud of the defendant THACH throughout these events, participating in a pattern of using the telephones of his law offices, the mails and his letterhead as a lawyer to hold out that THACH was variously a banker, the president of a bank and/or the owner of a bank when, as he well knew, or within the exercise of reasonable prudence should have known that the defendant THACH was nothing of the kind.

776) However, I acted upon this fraudulent misrepresentation to my own detriment.

777) By these acts the defendant ARIF deprived me of valuable legal services vital to me by his participation in, aiding and abetting and counselling of, or conspiracy with other defendants to

accomplish, a pattern of racketeering activity against me which took my gas station lease and franchise from me by fraud and extortion and prevented me from curing that fraud and extortion by effective action at a time when such effective action and effective legal representation were essential.

778) Using the telephone, the defendant ARIF arranged for a meeting on July 14, 1986, in his office for me and for defendant SOLAND and defendant VO. Ostensibly and fraudulently it was misrepresented that the meeting would be for purposes of my buying out defendant VO's inventory and actual investment (it being by then apparent that the claimed thirty-five thousand dollar ($35,000) loan, the claimed forty-five thousand dollar ($45,000.) deposit and the claimed

one hundred thousand dollar ($100,000.) deposit were all a fraud and a deceit) as I had been trying to arrange directly with SUNOCO. On purpose, however, the Sun Oil Company was excluded from the meeting and the "banker" THACH was included by the deceit of the defendant ARIF as an attendee.

779) At this meeting the defendant THACH and defendant VO, in front of defendant ARIF and defendant SOLAND offered twenty-five thousand dollars ($25,000.) for my gas station lease and franchise. However, I refused and said I did not want to be bought off. I wanted my gas station back, said so whereupon the defendants VO and THACH, in front of SOLAND and ARIF, threatened once again to kill me (in the Vietnamese language) which threats the defendant SOLAND immediately

translated into English and repeated to defendant ARIF. ARIF did not disassociate himself from this behavior and aided, abetted and counselled the defendants VO and THACH in this behavior.

780) Later, in the Superior Court of the District of Columbia, in September and October, the defendant ARIF, in documents that passed through the mails fraudulently denied any knowledge of these threats made in front of him which were brought to his attention.

781) Later, in the incident at the gas station described above the defendant ARIF engaged in additional fraud using the mails and telephones as part of the activities so described, including engaging in the deceit of purporting to settle my claims to get my station back by agreeing to abide by the decision of Ernie

Peele the following day, August 26, 1986, when in fact he had no present intention of doing so nor honoring that agreement or even urging the defendants whom he was counselling to do so.

782) Defendant ARIF then participated in the preparation and filing of the sham pleading in the Superior Court and the TRO proceeding that is subsequently described above, using the telephone and mails in so doing and interrupting commerce by falsely and fraudulently reclaiming the gas station for those who had extorted it from me, the rightful licensee, as he well knew.

783) Subsequently, using the phone and mails the defendant ARIF engaged in other fraudulent and sham motions and filings by counselling, aiding and abetting the pattern of racketeering

activity engaged in by the defendants THACH and VO, including pretending to consent to a deposition with no present intention of cooperating or doing other than he did do, namely, lie, attempt to prevent my counsel from conducting a meaningful deposition, and disrupting the proceedings with phony, staged objections and attacks on my counsel.

784) In doing all of these things the defendant ARIF failed to report his clients' fraud to those who were or might be injured by it as required on my best understanding by the rules of the Virginia Bar. Instead, defendant ARIF participated in the fraud and extortion of VO and THACH, leading an air of legitimacy to their empty promises and their threats and extortion.

785) Defendant ARIF conspired with

the other defendants to carry out, aid and/or abet and/or counsel their pattern of racketeering activity to my best information and belief.

ATTORNEYS ROSEMAN AND OTTMAN: AGGRAVATION: AIDING AND ABETTING, COUNSELLING, PARTICIPATING IN FRAUD: ADDITIONAL WIRE AND MAIL FRAUD, INTERFERENCE WITH COMMERCE

786) For full understanding of the following statements, I repeat and incorporate paragraphs 1) through 785) above.

787) By their use of the telephone and the mails VO's attorneys ROSEMAN and OTTMAN participated in the fraud and extortion of my gas station franchise and dealership as set out above by participating in the pattern of racketeering activity complained of.

788) The attorneys ROSEMAN and OTTMAN

aided and abetted and/or counselled the same to my best belief and information.

789) The attorneys ROSEMAN and OTTMAN by their fraud and sham pleading and filing and deceit involving the use of the telephones and the mails, particularly aided and abetted and counselled the defendants THACH, VO, MINH, LUU, and ARIF in carrying out their threats to deprive me of effective counsel, access to justice and funds with which to effectively resist the fraud and extortion of the defendants.

790) I was compelled to accept this fraudulent misrepresentation to my own detriment and to my great sorrow.

791) By their acts the attorneys ROSEMAN and OTTMAN deprived me of valuable legal services vital to me by their participation in, aiding and abetting and counselling of, or conspiracy with the

defendants to accomplish, a pattern of racketeering activity against me resulting in the taking of the gas station lease and franchise from me by fraud, extortion, and trick, and prevented me from curing that fraud and extortion by effective action at a time when such effective action and effective legal representation were essential.

792) In the Superior Court of the District of Columbia, in August, after the events at the gas station described above the attorneys ROSEMAN and OTTMAN aided, abetted, counselled and/or conspired in a pattern of racketeering activity as set out above, including instructing an associate to engage in sham pleading, misrepresenting what was contained in the American Bar Association Canon of Ethics by using an obsolete edition to document

the pertinent provision which would have prevented their deceit and fraud upon the court lied to the court repeatedly in filings and oral misrepresentations and otherwise engaged in mail and wire fraud themselves, all to the detriment of me and my interests. The attorney OTTMAN in particular fraudulently used the bar number of another member of the bar of the District of Columbia not even in the same firm, I understand on information and belief.

793) Attorneys ROSEMAN and OTTMAN participated in the sham pleading and hearing in the Superior Court, using the telephone and mails, and interrupting commerce by claiming the gas station for those who had extorted it from my possession. They knew or it was obvious, basing their claims upon VO's having "paid

for" the operation of the gas station when he was drawing checks on the corporate account pursuant to the fraud aforesaid, that VO's claims were false.

794) Subsequently, using the phone and mails the attorneys ROSEMAN and OTTMAN engaged in other fraudulent and sham motions and filings by counselling, aiding and abetting the pattern of racketeering activity engaged in by the defendants THACH and VO, including pretending to consent to a deposition with no present intention of cooperating or doing other than was done, namely,to lie, attempt to prevent my counsel from conducting a meaningful deposition, and disrupting the proceedings with phony, staged objections and attacks on my own counsel.

795) In doing all of these things the attorneys ROSEMAN and OTTMAN failed to

report their clients' fraud to me or others who might be injured by it and otherwise participated in the fraud of the other defendants and committed fraud as barred by Disciplinary Rules of the District of Columbia bar upon information and belief. They participated in the fraud and extortion of VO and THACH, lending an air of legitimacy to their empty promises and their threats and extortion.

796) Attorneys ROSEMAN and OTTMAN conspired with the other defendants to carry out, aid and/or abet and/or counsel their pattern of racketeering activity in which they engaged as set out herein which took my gas station and SUNOCO lease.

DEFENDANT SUNTECH SUNOCO, INC.
AGGRAVATION: AIDING AND ABETTING, COUNSELLING, PARTICIPATING IN FRAUD: ADDITIONAL WIRE AND MAIL FRAUD, INTERFERENCE WITH COMMERCE

797) For the understanding of the following statements paragraphs 1) through 796) are recalled to mind and incorporated by reference.

Defendant SUNTECH SUNOCO, INC., acting through its officers and directors, participated in the above pattern of racketeering activity and also aided, abetted, counselled the same and conspired with the other defendants.

798) Defendant SUNTECH SUNOCO, INC., fraudulently and by extortion robbed and stole the trade name coined by me and fraudulently, using the mails and the telephone, applied for and received licenses, permits, insurance and other

things to my harm and detriment.

799) Defendant SUNTECH SUNOCO, INC. and the Sun Oil Company conspired and concerted together in a pattern of racketeering activity using the mails and the telephone to harm me and to interfere with commerce to my harm.

DEFENDANTS COWBOYS: AGGRAVATION: AIDING ABETTING, COUNSELLING, PARTICIPATING IN FRAUD AND EXTORTION: INTERFERENCE WITH COMMERCE

800) For full clarity, I repeat everything by reference from paragraphs 1) through 799) and continue with my statements.

801) By their behavior as, and knowingly allowing themselves to be used as "street muscle" or the threat of the same to enable the other defendants VO, THACH, MINH and LUU to carry out their

fraud and extortion, the defendants COWBOYS participated in the above described fraud, extortion and interference with commerce as set out above, including their appearance at breakfast at the Mekong Center in early May, their appearance at the gas station when I was being physically intimidated and intimidated with threats not to come to my own gas station, their appearance at the Mekong Center on the morning of May 28, 1986, their threatening me on the sidewalk by the Saigon Market when I was with my small child, and so on.

802) One man in particular told another member of the local Vietnamese community that because of my alleged lying to and wrongs to defendants VO and THACH the "banker," he was going to burn my house.

SUMMARY STATEMENT OF AFFIANT

803) All of the foregoing statements are written in English. English is not my native language, but I have read carefully and gone over my affidavit as it was being prepared for use in connection with my Complaint against the defendants named herein. Much of the events with which this affidavit is concerned and dialogue connected with those events were conducted in Vietnamese, my native language. I was consulted at all stages of the drafting of this affidavit which puts my ideas and words into English. The drafting of these documents took a period of two months and I examined and approved each paragraph, asking about those words in English with which I was not completely familiar so as to make certain that they accurately

reflect my true intent in making the statement.

804) Further sayeth the affiant not.

AND, FINALLY, I SWEAR UNDER PENALTY OF PERJURY THIS 25th DAY OF MARCH, 1987, THAT THE FOREGOING AFFIDAVIT IS TRUE AND CORRECT TO THE BEST OF MY INFORMATION AND BELIEF.

/s/Thanh Vong Hoai/s/

THANH VONG HOAI
927 N. Highland Street
Arlington, Virginia
22201

88-765

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

APPENDIX III (Supplemental) PART C

Laurence A. Elgin *
John D. HEMENWAY
4816 Rodman St., N.W.
Washington, D.C. 20016

*Counsel of Record

CONTENTS OF THIS VOLUME OF APPENDIX III

(Supplemental) APPENDIX III

PART C

THE ORIGINAL COMPLAINT WITH WHICH THE AFFIDAVIT WAS INCORPORATED in the United States District Court for the Eastern District of Virginia, Alexandria Division.

HOAI v. VO, et al., CA 87-0294

(This is the 1st part of 4 parts) pp 155-190

II. THE ORIGINAL COMPLAINT WITH WHICH THE AFFIDAVIT WAS INCORPORATED

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
(ALEXANDRIA DIVISION)

THANH VONG HOAI, 927 N. Highland Street. Arlington, Virginia,	)
Plaintiff,	)
v.	) Civil Action No.
THANH VAN VO, 2242 Senseney Lane, Falls Church, Virginia, 22043,	)
THACH DUY NGUYEN, 6123 Greeley Boulevard, Springfield, Virginia 22152,	)
NGUYEN VAN MINH, 4102 N. River St., Arlington, Virginia 22207	)
NGUYEN THI BACH LUU, 4102 N. River St., Arlington, Virginia 22207	)
JOHN DO, address and real name presently unknown, a/k/a as one of the "Cowboys," a gang of Vietnamese "toughs" who prey upon the Vietnamese community in Arlington, Virginia,	)
RICHARD RO, address and real name presently unknown, a/k/a as one of the "Cowboys," a gang of Vietnamese "toughs" who prey upon the Vietnamese community in Arlington, Virginia,	)

NGUYEN TU LO, address and real name presently unknown, a/k/a as one of the "Cowboys," a gang of Vietnamese "toughs" who prey upon the Vietnamese community in Arlington, Virginia,

CARL KO, address and real name presently unknown, a/k/a as one of the "Cowboys," a gang of Vietnamese "toughs" who prey upon the Vietnamese community in Arlington, Virginia,

MY-LINH D. SOLAND, 5460 Fillmore Avenue, Alexandria, Virginia 22311,

MICHAEL S. ARIF, 2300 24th Road South Arlington, Virginia

SUNTECH SUNOCO, INC., 2305 Pennsylvania Avenue, S.E. Washington, D.C. 20020,

Defendants.

COMPLAINT PURSUANT TO THE ORGANIZED CRIME CONTROL ACT OF 1970 (RICO), 18 U.S.C. 1961 et seq., FOR FRAUD, MURDER THREATS AND EXTORTION IN TAKING OVER ENTERPRISES, FOR FRAUD IN THE PURCHASE AND SALE OF SECURITIES, FOR CONSPIRACY TO DAMAGE A BUSINESS OR BUSINESS REPUTATION, FOR MALICIOUS BREACH OF AND INTERFERENCE WITH A CONTRACT, FOR BREACH OF TRUST, MALPRACTICE, MALICIOUS PROSECUTION, AND FOR OTHER WRONGS AS SET OUT HEREIN, FOR INJUNCTIVE RELIEF, DAMAGES AND FOR DECLARATORY RELIEF

Plaintiff by way of complaint against the defendants alleges as follows:

JURISDICTION

__1) Jurisdiction is conferred on this Court, and this action is authorized by 18 U.S.C. 1964 and 18 U.S.C. 1965, 28 U.S.C. 1331, 28 U.S.C. 1343, 28 U.S.C. 2201, 28 U.S.C. 2202, 42 U.S.C. 1983, 1985, 1986 and 1988 and the First and Fourteenth Amendments to the United States Constitution as well as by Section 10 of the Securities and Exchange Act of 1934, (15 U.S.C. 78j), Rule 10-b (5) of the United States Securities and Exchange Commission promulgated thereunder.

VENUE

2) Venue properly reposes in this Court because all of the parties except one are residents of Virginia, and that one is the SUNTECH SUNOCO, Inc., a corporation owned and controlled by Defendant THANH VAN VO and his wife which was formed for the purpose of implementing racketeering activities and did not exist until well after the start of events leading to this

action. Most of the confrontation and threats, instances of wire and mail fraud and other actions complained of took place in Virginia and though the acts complained of affect interstate commerce and the station is in the District of Columbia, all contracts alleged, except one were negotiated and entered into in whole or in major part in Virginia.

PARTIES

PLAINTIFF

THANH VONG HOAI

3) Plaintiff THANH VONG HOAI ("HOAI") is an adult citizen of the United States who resides at 927 N. Highland St., Arlington, Virginia_and did so reside at all times pertinent hereto.

DEFENDANTS

The above plaintiff names jointly and severally the following defendants:

THANH VAN VO

4) Defendant THANH VAN VO ("VO") is an adult permanent resident of the United States who resides at 2242 Senseney Lane, Falls Church, Virginia, and did so reside at all times pertinent hereto.

THACH DUY NGUYEN

5) Defendant THACH DUY NGUYEN ("THACH") is an alien adult who resides at 6123 Greeley Boulevard, Springfield, Virginia, and did so reside at all times pertinent hereto.

MINH VAN NGUYEN

6) Defendant NGUYEN VAN MINH ("MINH") is an adult citizen of the United States who presently resides at 4102 North River Street, Arlington, Virginia, and who prior thereto and during most of the time pertinent hereto lived at Apartment 105 E, 3709 S. George Mason Drive, Falls Church, Virginia.

NGUYEN THI BACH LUU

7) Defendant NGUYEN THI BACH LUU ("LUU") is an adult permanent resident of the United States who presently resides at 4102 North River Street, Arlington, Virginia and who prior thereto and during most of the time pertinent hereto lived at Apartment 105 E, 3709 S. George Mason Drive, Falls Church, Virginia.

JOHN DO, RICHARD RO, NGUYEN TU LO AND CARL KO

__8) JOHN DO, RICHARD RO, NGUYEN TU LO, and CARL KO, address and real names presently unknown, a/k/a as the "Cowboys," are aliens, permanent residents and citizens of the United States, some of whom, plaintiff has it on information and belief, reside in Texas and others in the Arlington area who make up a gang of ethnic Vietnamese "toughs" whom the above defendants used in intimidating plaintiff and use in intimidating others in the Vietnamese community in their attempt to become "like the Italian Mafia" in the events described below.

MY-LINH SOLAND

9) Defendant MY LINH SOLAND is an adult citizen of the United States who holds herself out to practice law in the Commonwealth of Virginia, City of Alexandria, with offices at 109 South Fairfax Street in that city. At the time that she was retained by plaintiff, unbeknownst to him and without revealing the fact to him, she also on her own and through the attorney with whom she held herself out as a partner had for some time represented the defendants MINH and/or LUU and continued to do so without informing plaintiff until several months later when events revealed the double representation and agency.

MICHAEL S. ARIF

__10) Defendant MICHAEL S. ARIF is an attorney who resides at the above addresses and did so reside throughout the time during which the events complained of occurred, and who, as plaintiff alleges

below, though ostensibly only counsel to defendants went beyond representing defendants THACH and VO as counsel and participated in the acts complained of herein which were designed and intended to frighten plaintiff through extortionate acts and deception in order to deprive plaintiff of his businesses, among other things complained of herein.

SUNTECH SUNOCO, INC.

11) Defendant SUNTECH SUNOCO, INC., is a corporation which, plaintiff has it on information and belief, was incorporated by the defendant VO under the laws of the District of Columbia to take over the interest and control of the plaintiff in the business of the gas station at the above location through a pattern of racketeering activity, including fraud, murder threats and extortion, and with the proceeds of this said pattern of racketeering activity involving such acts did so take over the said interests of the

plaintiff, or control thereof, in conjunction with the defendants VO, THACH, MINH, LUU, ARIF, and SOLAND, appropriating the interests and property of plaintiff in the same, including the business or trade name conceived of by the plaintiff. Though this corporation did not exist at the start of the events leading up to this cause of action, since it was specially formed to carry out some of the racketeering activity, including fraud and extortion, complained of, it has, since its formation, engaged in a pattern of unlawful activity, including fraud, murder threats and extortion, and conspired with other defendants in the same.

COUNT I-RICO
A. GENERAL ALLEGATIONS OF A PATTERN OF RACKETEERING ACTIVITY, INCLUDING FRAUD, ROBBERY AND EXTORTION, IN VIOLATION OF 18 U.S.C. 1962(a): DEFENDANTS THACH, VO, MINH, LUU & THE "COWBOYS," THE PRINCIPAL ORGANIZED CRIMINAL ENTERPRISE

__12) Plaintiff incorporates herein by reference and repeats the allegations of paragraphs 1) through 11) above.

13) Defendants VO, THACH, MINH and LUU have received income derived directly and/or indirectly from a pattern of racketeering activity including threats of death and bodily harm in violation of 18 U.S.C. 1962.

14) Two instances of this racketeering activity, including fraud, death threats or extortion, on the part of the four above-named defendants, out of more than two from which these defendants received income, involved the plaintiff directly as set out herein and in the attached affidavit and others of which, upon information and belief, involved others to their direct damage and resulted in proceeds to these defendants which they used in acquiring interest in, or the establishment and operation of, businesses and business interests which lawfully belonged to the the plaintiff.

15) These defendants named in paragraph 13) used the income derived directly and/or indirectly from this pattern of racketeering activity, including fraud, death threats and extortion, to acquire, first, an interest in one business in interstate commerce belonging to the plaintiff, consisting of a gasoline station franchise and lease, both from the Sun Oil and Refining Company ("Sunoco"), located at 2305 Pennsylvania Avenue, S.E., Washington, D.C., by illegal and/or extortionate methods, using deceit and threats of violence, and to acquire the interest of the plaintiff in another business, the Mekong Center Food Store, a Vietnamese specialty food and gift shop located in the Mekong Center Building at 3107 Wilson Boulevard, Arlington, Virginia, which latter business affects interstate commerce inasmuch as it is located on and draws business from a major highway artery leading into and out of the

District of Columbia about 4 or 5 miles from the line between the District of Columbia and the state of Virginia and ordered its supplies and goods regularly from the District of Columbia, Maryland, Virginia and other states, all in violation of 42 U.S.C. 1962 (a) as set out more fully below and in the attached affidavit which is incorporated herein.

16) These same defendants named in 13) above acquired this business and business interest or control of the same from the plaintiff, respectively, through a pattern of racketeering activity, including fraud, death threats and extortion as set out more fully below in violation of 18 U.S.C. 1962 (b).

17) Having so acquired the said business interests and/or control of the same from the defendant by a pattern of racketeering activity involving unlawful acts and having used the proceeds from a pattern of racketeering activity in doing so, the

named defendants VO, THACH, MINH, LUU, and SUNTECH SUNOCO, INC., conducted the affairs of these enterprises through a pattern of racketeering activity involving such unlawful acts as set out more fully below and in the attached affidavit which is incorporated herein.

18) They were aided, abetted, and/or counselled in the same by the defendants ARIF and SOLAND each of whom by overt acts described in the accompanying attached affidavit, participated in the pattern of racketeering activity complained of on more than one occasion as set out in the accompanying affidavit.

19) They were aided and abetted in this enterprise, and in acquisition of the business interests of the plaintiff and in the acquisition and takeover and exclusion of plaintiff from, plaintiff's business, by the defendant COWBOYS, who acted as the "street muscle" of the other plaintiffs.

20) In addition the said four defendants operated a de facto organization or enterprise which, in their own words, aspired and aspires to be like the Italian and Italian-American mafia, or "strong," as they like to term it, as an organized criminal entity and which conducted its enterprises through a pattern of racketeering activity involving fraud, death threats and extortion in violation of 18 U.S.C. 1962 (c) as set out more fully below and though, at times the defendant THACH, as set out below, used a pattern of racketeering activity involving such unlawful acts to deceive and harm his co-defendants MINH and LUU, he did so in his aspirations to be the boss of all bosses of this incipient organized crime entity, and show who was the "capo" or head of the organization in order to get the others in his power and bend them to his will to do his bidding.

21) The defendants conspired, in violation of 18 U.S.C. 1962 (d) to violate the provisions of one or more of the subsections (a), (b) and (c) of 18 U.S.C. 1962 as set out herein.

22) The anonymous defendants DO, RO, LO and KO, the Vietnamese "street muscle" gang, many of whose members live in, and many of whose activities are centered in Arlington, Virginia, also known as the "Cowboys," were employed by and associated with the aspiring organized criminal enterprise of the defendants set out above as its "street muscle", since they aspired to have their association, as they informed the plaintiff, become a Vietnamese version of the Mafia, the activities of which affected interstate commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity involving fraud, death threats or extortion the

business enterprises and interests of the plaintiff aforesaid, all in violation of 18 U.S.C. 1962 (c).

(b) DEFENDANT SOLAND

23) The defendants MINH and LUU did commit a further violation of the aforesaid section of the laws to further the illegal purposes of the group in that they did conspire further in this regard to deprive the plaintiff of counsel and prevent him, therefore, from petitioning for the redress of his grievances in furtherance of their racketeering efforts as set out herein by continuing to retain and use the services of the plaintiff's then attorney, from May 28, 1986, when that attorney, defendant MY LINH SOLAND ("Soland"), was first retained by plaintiff, until August 18, even while they were conspiring and concerting together with the other defendants as set out herein and acting in the pattern of racketeering activity set out herein to

deprive plaintiff of his effective capital and businesses.

24) At the time that the defendant SOLAND did undertake to represent plaintiff in June of 1986 she did not reveal to plaintiff that she was representing the defendants MINH and LUU, who were part of the enterprise engaged in the pattern of racketeering activity involving unlawful acts that harmed the plaintiff with regard to both of his business interests referred to.

25) The defendant SOLAND did concert and conspire together with the aforesaid defendants MINH, LUU, VO, THACH, ARIF, SUNTECH SUNOCO, INC., and the COWBOYS to injure the plaintiff by assisting the defendants in their extortion and racketeering activities against the plaintiff as their agent when in fact she was holding herself out to the plaintiff as his attorney, and that she did so in breach of trust and/or fiduciary duty, by

undisclosed double agency, and by deceit as to her status as an attorney admitted to practice in other jurisdictions, all in violation of law and in violation of the ethics of her profession concerning conflict of interest and duty to clients by which she is legally bound, and

26) All of the defendants named herein did conspire together, each with the other, in different combinations at different times, as set out more fully below, in violation of these subsections (a),(b) and (c) of 18 U.S.C. 1962, which conspiracies violated 18 U.S.C. 1962 (d).

(c) SPECIFIC RACKETEERING ACTIVITY

27) The defendants VO, THACH, MINH, LUU, ARIF, SUNTECH SUNOCO, INC., and THE COWBOYS committed a number of acts of wire fraud using the telephone and threatened to extort and did extort the plaintiff of his two business interests, and did interfere with commerce to plaintiff's harm and these acts constituted

racketeering activity as defined in 18 U.S.C. 1961 and also made extortionate extensions of credit to and/or collected and/or attempted to collect by extortionate means extension of credit to the plaintiff and to punish him for the nonrepayment of credit in violation of 18 U.S.C. 892 and/or 894 as incorporated by reference in 18 U.S.C. 1961, and similarly engaged in interference with commerce, robbery and/or extortion in violation of 18 U.S.C. 1951 as incorporated also in Section 1961. They also defrauded plaintiff and committed fraud upon him using mail fraud as instrumental in such fraud or as incidental thereto in violation of 18 U.S.C. 1341 and/or telephone transmission in violation of 18 U.S.C. 1343.

28) The anonymous defendants DO, RO, LO and KO ("cowboys") engaged in these same activities as they were employed by the aforesaid defendants, either or some of

them, or as associates of the aforesaid defendants in violation of 18 U.S.C. 1962 as aforesaid and within the definitions of 18 U.S.C. 1961 aforesaid and 18 U.S.C. 2.

29) The defendant SOLAND was employed by, and associated with, the defendants MINH and LUU and, upon information and belief, THACH in certain of these activities as set out above and more specifically below in violation of 18 U.S.C. 1962 as aforesaid and within the definitions of 18 U.S.C. 1961 aforesaid and 18 U.S.C. 2. The defendant ARIF was employed by, and associated with, the defendants THACH and VO in violation of the same.

30) All these defendants did do these things as set out more specifically below, to wit:

31) The defendants, and each of them, at varying times and in various ways, as set out more fully below and in the attached affidavit which is incorporated herein by

reference, did conspire and concert and act to take from the plaintiff by extortion consisting of fraud, deception and threats of violence, sometimes using the telephone and/or mails and/or other methods of interstate communication and by interstate travel by motor vehicle, the two businesses of the plaintiff aforesaid, one of which is in interstate commerce in the District of Columbia and the other of which, in Arlington, Virginia, near the District of Columbia, affects interstate commerce, as follows:

COUNT II-RICO, FRAUD: FACTS SUPPORTING AND ESTABLISHING SAME

(a) Relevant Business History and Background of Plaintiff

32) Plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 31) above.

33) Plaintiff is a man experienced in the gas station, auto repair, and related businesses, having worked in gas stations, body shops and car washes, sometimes in two or more of such facilities simultaneously from 1975 until the time, late in 1985 and early in 1986, when the events out of which this complaint arises began.

34) Plaintiff began as a gas station attendant and has been since then a dealer and owner-operator of such facilities and a supervisor of a number of stations for Sun Oil and Refining Company, ("Sunoco").

35) Plaintiff's prior operations were relatively small stations and facilities

and some were profitable, some were "break-even" propositions allowing adequate salaries and expenses, and some, after showing some profitability and/or promise, became non-profitable and, as a business decision, were shut down.

36) Though some of these ventures were capitalized by plaintiff on his own, most were funded with capital from plaintiff's wife's mother. Plaintiff's wife and her mother are of ethnic Vietnamese-Chinese, or "Overseas Chinese" extraction, as it sometimes called and are from an extended family whose merchant skills and access to capital are well known in the Vietnamese and allied oriental-American communities. The manner in which plaintiff, his wife, her mother, and their related extended family work together to take advantage of business opportunities, with his wife's family supplying capital, were known to the defendants herein, with the possible

exception of defendant ARIF, who is not of far eastern extraction.

(b) The Sunoco Station at 2305 Pennsylvania Ave., S.E., Wash., D.C.

37) In February of 1986 plaintiff, while looking for new business opportunities, observed that the Sunoco station at 2305 Pennsylvania Avenue, S.E., in Washington, D.C., had a "For Lease" sign on it with a telephone number to call.

38) This station site of Sunoco was known to plaintiff. Earlier, in 1980, he had negotiated with the Sunoco dealer then running it and had agreed to purchase it for one hundred and thirty-nine thousand dollars ($139,000.). Both plaintiff and Sunoco knew that the station was capable of realizing a much greater return under his management. Plaintiff was encouraged by Sunoco not to buy the dealership at that time but rather to wait in the hopes that the station would come available

without a purchase from a dealer who was its current operator or another site with equal potential could be found.

39) The station is located on a major highway artery, and was known by both plaintiff and Sunoco to be capable of being raised in its monthly gallonage, under plaintiff's management, from eighty-five thousand (85,000.) gallons to over one hundred thousand ($100,000.) gallons per month and from there, with the addition of a "C-Store," as Sunoco's in-house convenience stores and mini-marts are called, to be raised to a gallonage of one hundred and forty thousand (140,000.) gallons and then ultimately one hundred and seventy-five thousand (175,000.) gallons per month, based on the measurable traffic flow at the location.

40) The station has three service bays for mechanical work.

41) It is a location with extremely high

profit potential, capable of being raised to gross annual dollar volume within two years, under proper management, of close to three million dollars ($3,000,000.) per annum.

42) Plaintiff entered negotiations with Sunoco, with personnel in that company whom he knew who knew him and his capabilities from past work and dealings, to aquire the lease and franchise for the station.

43) After thorough internal review and examination of his qualifications, plaintiff was selected by Sunoco, from a large field of applicants, to be the lessee and franchisee (formerly dealer) for the station.

44) As a result of plaintiff's negotiations leading to the granting of the said lease and franchise by Sunoco to plaintiff, plaintiff became the victim of a pattern of fraud, making extensive use

of the telephone, by the defendants and which culminated in extortion of the said gas station lease and franchise from the plaintiff by the defendants, which was perpetrated in essence as follows:

45) Plaintiff was informed by Sunoco of the capital he needed to commence operation of the lease and frachise, seventy thousand dollars ($70,000.).

46) Plaintiff had access, through his wife's family, to half of this needed capital, and expected to borrow the other half, or thirty-five thousand dollars. ($35,000.)

(c) The Involvement of Defendant Vo

47) The defendant VO, as plaintiff was winding down the prior business which he and his mother-in-law had ventured into, falsely and fraudulently deceived plaintiff that he, VO, was a wealthy construction company owner who had one hundred thousand dollars ($100,000.) on

hand at all times from the cash flow of his construction business that he would be happy to lend to his friend the plaintiff to get plaintiff started in his next business venture.

48) This was a fraud and a deceit, carried out largely over the telephone and designed to induce plaintiff to rely upon VO as a source of a loan for a new business venture and plaintiff did so rely to his harm and detriment.

49) In reality the defendant VO had no such large construction company and no money to lend such as he stated he did. This deceit was designed by VO and THACH, ARIF, MINH and LUU to ascertain the amount of additional capital outside his wife's family that plaintiff needed and to tie up the capital available to plaintiff and gain control of its benefits by fraud and extortion while simultaneously weakening plaintiff's ability to resist the planned

defrauding and extortion of his gas station lease and franchise from him by depriving him of capital and control of his gas station business.

50) The defendant VO insinuated his way into the trust and confidence of plaintiff by various frauds and deceits designed to further make plaintiff vulnerable to and dependent upon the defendants, such as making plaintiff a small personal loan to tide him over between businesses which was represented to be a friendship loan which would not be demanded until plaintiff was esablished in a new business, claiming to relieve plaintiff of the burden of opening a station bank account in order to seize control of the station's bank account and its daily proceeds, and the like.

51) Other such frauds and deceits used for this purpose upon the plaintiff, largely using the telephone, and having the desired effect of causing plaintiff to

rely upon them to his harm and detriment so that defendants might seize his gas station business, included representing that defendants THACH and VO would relieve plaintiff of the burden of finding experienced mechanics and that they would find them, and that defendant VO was merely going to copy plaintiff's signed original of the lease and franchise agreement between plaintiff and Sunoco when in fact VO surreptitiously switched the two and robbed the signed original from the plaintiff.

52) This last constituted a robbery under the definition of 18 U.S.C. 1961 (1) (A) and hence a racketeering activity.

53) However, the major frauds and deceits practiced upon plaintiff, using the telephone substantially, in order to "set him up" for the extortion from him of the gas station business, were these:

53) That defendant THACH was <u>the</u>

president of and owner of the McLean Bank when in fact he was no such thing. This fraud and deceit was designed to make plaintiff reluctant to criticize or strenously attempt to stop the fraudulent activities of the other defendants for fear of offending someone whose access to capital and ability to affect his credit was vital to his business and livelihood, and to make credible the various fraudulent representations of all the defendants concerning financing and potential financing as set out in the attached affidavit. Plaintiff relied upon this misrepresentation, as defendants intended him to do, to his harm and detriment.

54) That defendant VO had established an amount of, first, forty-five thousand dollars ($45,000.) and then one hundred thousand dollars ($100,000.) in an account in the McLean Bank (The bank fraudulently

claimed to be owned by and headed by defendant THACH) in the name of the gas station business, first on behalf of plaintiff as a favor, then on behalf of VO who claimed to want to control the account in order to protect his fraudulently claimed "loan" which he misrepresented he was making to plaintiff. In fact no such "loan" was ever made. The entire claimed "loan" was a "Ponzi scheme," in which the defendants VO and THACH established a bank account in the name of the gas station, prevented plaintiff by fraud, deceit, robbery (of the bank documents and the daily proceeds of the station) and extortion placed the daily receipts of the station, which VO seized control of by fraud, deceit and robbery, and then placed the same in the station account and thereby claimed credit for a "loan" which they never made. This was designed to induce plaintiff to rely upon it as a

false representation and he did to his harm and detriment.

55) The defendant VO claimed to be making a loan to plaintiff of the needed thirty-five thousand dollars in capital on a friendly basis where there would be no payback for a year of either principal or interest and then, interest would be paid if necessary to prolong the loan beyond a year at ten percent (10%). Defendant VO never had any present intention of making such a friendly helpful loan but only desired to induce plaintiff to rely upon the false representation that he was willing to make such a loan in order to defraud and deceive and then extort the plaintiff and plaintiff relied upon this misrepresentation to his harm and detriment. The arranging of this fraudulent loan to plaintiff was accomplished in large part through the use of the telephone.

56) Defendant VO claimed to have a large construction business of eighty (80) employees which occupied most of his time and to not be interested in owning any part of gas station lease and franchise being applied for by plaintiff. In fact defendant VO had no such business and had no present intention when he made such fraudulent promises of doing anything other than seizing control of plaintiff's gas station business by fraud and extortion. Plaintiff relied upon VO's representations to the contrary, which were deceitful, to his harm and detriment.

57) While the defendant VO, with the aid of the defendants THACH and ARIF, (whose participation was at first not known to plaintiff,) was engaged in this fraud and deceit in conspiracy with the defendant VO, the defendants MINH and LUU, who later joined in the fraud to deprive plaintiff of the gas station directly, were

participating in the fraud and extortion of the gas station by a series of frauds involving extensive use of the telephone which culminated as planned in the fraud and extortion from the plaintiff of his other business, the aforesaid oriental food store business and the robbery from him of the stock of that business.

58) The details of the various misrepresentations making up the total pattern of wire fraud in this fraud over the food store business are set out in the accompanying affidavit. The main fraud was that the defendants MINH and LUU, unbeknownst to the plaintiff, with the cooperation of VO and THACH, induced plaintiff and plaintiff's wife, to "purchase" the food store business with fraudulent and deceitful promises, promises which defendants MINH and LUU never had any present intent of fulfilling. The whole intent of this

fraudulently induced "sale" of the food store business was to induce plaintiff to tie up his available capital, whose amount was known to these defendants, in inventory for the food store by inducing him to take over its operation, together with his wife, in such manner that he would have no choice, in order to continue the business, but to sink that capital into food inventory which the defendants then intended to defraud, rob and extort from him, which they did. Plaintiff relied upon the misrepresentations designed to induce him to enter this fraudulent purchase scheme and did so to his harm and detriment.

88-765

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

APPENDIX II I (Supplemental) PART D

Laurence A. Elgin *
John D. HEMENWAY
4816 Rodman St., N.W.
Washington, D.C. 20016

*Counsel of Record

CONTENTS OF THIS VOLUME OF APPENDIX III

(Supplemental) APPENDIX III

PART D

THE ORIGINAL COMPLAINT WITH WHICH THE AFFIDAVIT WAS INCORPORATED IN THE United States District Court for the Eastern District of Virginia, Alexandria Division.

HOAI v. VO, et al., CA 87-0294

(This is the 2nd part of 4 parts) pp 191-265

COUNT III-RICO, THE EXTORTION OF THE GAS STATION BUSINESS

57) [paragraphs 57 and 58 repeat in the original] The plaintiff incorporates herein by reference and repeats the allegations of paragraphs 1) through 56) above.

58) On or about the 28th of March, 1986, plaintiff pressed defendants MINH and LUU about signing a lease on the food store as they had fraudulently promised. Plaintiff stated to MINH and LUU that he had a problem in that he now had to spend all of his time with the gas station as the opening of it approached. Plaintiff stated that he would have no time, once the lease was signed, to go around to the Arlington County offices and other places to see about the business license and other matters that had been held up pending the signing of the lease so that plaintiff could show he had a leasehold establishing the business as belonging to

him and his wife. Plaintiff told MINH and LUU that he must therefore have the lease as soon as possible. To make his point the plaintiff showed the defendants MINH and LUU the receipt from lErine Peele, the area manager of Sunoco, for the two deposits totalling seven thousand dollars ($7,000.) which he had received on the 21st. The defendants MINH and LUU now knew that plaintiff was obligated to go ahead with the gas station but that his capital from his mother-in-law was tied up in the inventory of the food market.

59) The promises of the defendants MINH and LUU to dothe promised lease and sign it within a few days were a further fraud and deceit. They had no intention then or ever of actually drawing up and signing such a lease, or even of signing one that someone else had drawn up.

60) Their intention was to compel the plaintiff and his wife of to tie up more

and more of the capital made available to them by the plaintiff's mother-in-law in the food store inventory so that the capital would not be available to plaintiff in order that the other defendants, in conspiracy with these two defendants, might extort the gas station from plaintiff and to simultaneously force the plaintiff and his wife to continue to convert as much of their available capital into food inventory for the store as possible without plaintiff and his wife having any written documentation protecting the constructive and de facto ownership which plaintiff and his wife were building up in the business. THACH and VO cooperated and conspired with MINH and LUU to make the position of plaintiff as vulnerable as possible in this regard and increase the inventory in value so as to have more to seize in the robbery and extortion of he inventory and the food

store business that the defendants were planning.

61) Defendants MINH and LUU on this and many other occasions told the plaintiff that they understood his problem and begged him "just a few more days" and they would get the lease for him. They made up fraudulent excuses on each occasion.

62) The continuing promises of the defendants MINH and LUU to sign the agreed upon lease were a continually repeated fraud. They had no intention then or ever of actually drawing up and signing such a lease, or even of signing one that someone else had drawn up.

63) Their intention was to commpel the plaintiff and his wife to tie up more and more of the capital made available to them by plaintiff's mother-in-law in the food store inventory so that the capital would not be available to the plaintiff in order that the other defendants, in conspiracy

with these two defendants, might extort the gas station from plaintiff and to simultaneously force the plaintiff and his wife to convert as much of their available capital into food inventory for the store as possible without there being any protection for ownership of the business which plaintiff and his wife had built up nor the extensive inventory which plaintiff and his wife had invested in.

64) All this was done also so that the defendants would have more inventory in the store and more good will built up which they might rob, defraud and extort from plaintiff.

65) Another fraud, using the telephone, was practiced upon plaintiff by MINH, LUU and THACH, also designed to make sure that plaintiff's available capital got tied up in the inventory of the food store so that defendants could rob it from him. In March when the defendants MINH and LUU

were trying to induce plaintiff and his wifeto go into the food store venture, the plaintiff and his wife pointed out that they could not pay the twenty thousand dollars to buy the business and, even if they could, they could not use plaintiff's gas station capital to buy the fresh inventory that was needed. When plaintiff and his wife made it clear that they could not go into the food store forthis reason these three defendants defrauded the plaintiff and his wife into going into the business by misrepresenting that defendant THACH, the phony "banker," would arrange a loan for the plaintiff which the defendants MINH and LUU, whohad a six million dollar line of credit from THACH's "bank," would co-sign. This was an outrageous fraud designed to induce plaintiff to rely upon it to his harm which he did.

66) The defendant VO sought, by trick

and subterfuge, and ultimately by threats of bodily harm and economic harm, to separate the plaintiff from the indicia of ownership of what defendants perceived to be the plaintiff's gas station business and the same all constituted badges of fraud.

67) From the time that the defendants MINH and LUU came to the house of the plaintiff and began to talk to the plaintiff and his wife about purchasing the Mekong Center food store and talking to them on the phone about it, from that time on, the plaintiff and the defendants MINH and LUU began to talk to each other with increasing frequency on the telephone, calling each other often to discuss the business of the plaintiff in getting the Sunoco dealership and franchise and then the food market, or the business of the defendants MINH and LUU in developing their Philadelphia project.

Plaintiff would talk to the defendants MINH and LUU at least 3 or 4 times a week. Frequently, during this period, the defendants MINH and LUU would call the plaintiff at home or at work and frequently, the plaintiff would call defendants MINH and LUU at their home, which they also used for the conducting of their business, as they had no separate office. The majority of the many frauds described in the accompanying afffidavit as being perpetrated by MINH and LUU were executed in whole or in part in these phone calls.

68) Beginning in the first days of April, almost every evening that the plaintiff called the house of defendants MINH and LUU, the defendant THACH would be at the house of MINH and LUU also.

69) After the evening on or about March 18, 1986, that plaintiff ate dinner at the house of the defendant THACH, plaintiff

did also frequently call or was called by the defendant THACH. The defendant THACH asked plaintiff not to call him, THACH, at the McLean Bank which he was ostensibly president and owner of, because he said it would not look right for him, THACH, as the owner and president of a bank, to be seen talking to the Vietnamese people because people would wonder why he was helping other Vietnamese instead of Americans. These phone calls to and from the defendant THACH were instrumental in many of the frauds perpetrated upon plaintiff as set out in the accompanying affidavit as particularly described herein.

70) Beginning in early April also, particularly early in the evening, plaintiff would call the house of defendant THACH and THACH would be there with the defendants MINH and LUU.

71) Beginning just a few days into

April, when plaintiff would call the house of defendants MINH and LUU or THACH, the defendant VO would be there as well.

72) From early April on the defendants MINH, LUU, THACH and VO began to go places together with increasing frequency.

73) On or about April 10, 1986, the day on which the station was formally opened under plaintiff's management, the defendant VO robbed plaintiff of the checking account and checking account documents of the station as part of the pattern of racketeering activity described herein.

74) Defendant VO caused trouble between plaintiff and Sunoco from April 10 until he finally drove plaintiff out of the station in May with threats of force and physical violence in May with the cooperation of the defendants COWBOYS and the other defendatnts herein. His intent was to interfere with the contract,

business relationship and business opportunity between plaintiff and Sunoco as part of his plan to take over the business of the gas station by fraud and extortion, as his subsequent behavior showed and to that end to rob plaintiff of his valuable business relationships with Sunoco and its personnel.

75) The defendant VO interfered with the contracts between plaintiff and the mechanics hired by plaintiff and robbed plaintiff of the value of their services by bringing in only individuals who were under his control and loyal to him for various reasons so that he might, with his co-conspirators, more easily extort the station from the plaintiff when the time came to reveal his true intentions and engage in threats of harm and physical violence and death to the plaintiff and his family. At the time, however, the plaintiff, unsuspecting, relied upon this

misrepresentation to his harm and detriment.

76) Late in the morning on the 24th of April, 1986, the plaintiff received a telephone call at the gas station from John Pendergast in Philadelphia, Pennsylvania, the head of credit for Sunoco, who asked the plaintiff how things were going with the gas station. Plaintiff replied that everything was going perfect and John Pendergast then asked the plaintiff how come the plaintiff had bounced a check to Sunoco for over seven thousand dollars ($7,000.) for the gasoline that had been delivered back when the station opened on the 10th of April. This check was deliberately allowed to bounce by the defendants THACH and VO in order to harm the plaintiff's relationship with Sunoco and rob him of his good name and business reputation and interfere with his contracts with Sunoco.

77) On the morning of April 26, 1986, the defendant VO was at the gas station about 7:30 AM when the plaintiff arrived for work. Plaintiff asked the defendant VO where he had been. The defendant VO said that he had been up in West Virginia to see his father to ask him for the money he had promised the plaintiff but that his father had said that he wouldn't give him the money because his name wasn't on the lease for the station. His father had said, he reported to plaintiff, that he, the defendant VO, hadn't done well in the construction business and therefore he wasn't going to give him money for the gas station unless his name was on the lease. This was fraud and deceit just as much as the story it replaced about the defendant's having the money himself. The father of defendant VO had not made any such representations. This was merely designed to set plaintiff up for the

extortion that was soon to follow.

78) Plaintiff asked the defendant VO why he had told him before that he, VO, had the money and not that his father had the money and might not give it to him. "you told me many times, I asked you many times, that you had a hundred thousand dollars ($100,000.) on hand," the plaintiff told him.

79) Plaintiff then asked the defendant VO what he was going to do about the bounced check to Sunoco.

80) The defendant VO replied that the plaintiff shouldn't worry about it,now, he, the defendant VO, had the money in the bank to cover the check, the check was good. Just tell Sunoco to put the check through again, he said. Plaintiff told him no, that he could not do that, Sunoco wouldn't let him. You go get a certified check today, he said to the defendant VO, since you have the money in the bank; I

must send it to Philadelphia right away. The defendant VO told the plaintiff to take it easy, that the bank had made a mistake, taht the bank would send a letter to Sunoco explaining it.

81) It was after this part of the conversation that the plaintiff told the defendant VO that he wanted him and the defendant THACH out of his gas station, that he would pay the defendant VO and the defendant THACH every last penny that they had actually put in the gas station. (At this time plaintiff had in the gas station a log book which he and the defendant VO had compiled every day in which they entered the receipts from the previous 24 hours when the added them up in the morning, so he knew how much had been generated by the station itself. Later this book was taken by the defendants after they extorted the station from the plaintiff.)

82) To this the defendant VO replied: It is not so easy as you think, Mr. Hoai, I will go see my brother.

83) In response the plaintiff asked: "Who is your brother?" The defendant VO replied that the defendant THACH was is brother. Defendant VO then left the station.

84) When the plaintiff had visited and eaten at the house of the defendant THACH from the 18th of March on, there was usually a bodyguard of THACH's there, trained in the martial arts, named DI. There were also other men around always some of whom lived there, said to be cousins and other relations.

85) About noontime that same day the defendant VO returned to the station along with the defendant THACH. The defendant VO was in his Chevy van. The defendant THACH was driving a separate 1986 Ford van conversion and with him in it the

manGiang, who was one of the ones who lived in defendant THACH's house.

86) The plaintiff was standing by tge gas pumps. The defendant THACH walked up to him, along with the defendant VO, and said "What's going on ? I heard VO tell me that you want the station back." The plaintiff replied: "That's right, I want to get my station back."

87) Defendant THACH said: "We can figure that out for you now. First, if you want to get the station back, you have to have two hundred and forty thousand dollars. ($240,000.). Plaintiff responded, "What two hundred and forty thousand dollars, are you kidding me ?" Defendant THACH then said to the plaintiff that defendant VO had put about one hundred and forty thousand dollars in inventory in the station, to which the plaintiff replied: "What hundred and forty thousand dollars in inventory ? You give a bad check for

seven thousand dollars and you talk about a hundred and forty thousand dollars in inventory."

88) The defendant THACH then said that the plaintiff would have to reimburse for VO and pay VO everything, that VO had paid over one hundred thousand dollars ($100,000.) to relocate employees to the station from Pennsylvania, from Texas, from New York, to move them and pay to rent homes for them and other expenses and that VO's accountant had everything and he would make a record of it. Plaintiff replied that it was none of his concern, that he had no agreement to hire any of those people and had never authorized anyone to hire them.

89) By this time plaintiff, defendant VO and defendant THACH were in the office of the station. The man Giang was in the van. A number of the men of VO and THACH who they were now using as [sic] the

attempt to try and extort the one hundred thousand dollars ($100,000.), men loyal to Vo and THACH, were in the garage of the station.

90) Thach said to the plaintiff: "Why you say you give the station to VO and now you lie to us ? We will kill you. "Vo," he said, "was a pilot-major in the air force: he knows how to take care of people like you. You lie to us, we will kill you."

91) This was the beginning of the extortion, which was then kept up increasingly, with more and more threats of violence, until May 16, 1986, when the plaintiff reluctantly gave in to the threats of violence and stopped going to the gas station.

92) Throughout these threats of violence, from April 28 or so until May 16, there were defendant COWBOYS at the gas station when plaintiff went there.

93) Later that afternoon, plaintiff was called on the telephone by the defendant THACH, who said that he was calling from the office of the lawyer ARIF, (the defendant ARIF.) The defendant THACH said he wanted plaintiff to come to the office of the lawyer defendant ARIF and sign the note for the money that the plaintiff owed to "us," referring to the defendants THACH and VO.

(a) The Defendant Arif

94) About 6 O'clock or so that evening plaintiff went to the law offices of the defendant ARIF at the firm of Busman and Busman on Braddock Road in Fairfax County, Virginia.

95) Plaintiff had been to these offices before and had dealt with defendant ARIF before and had noticed that the defendant ARIF acted in a pattern of tricking people, of double and even greater representation, and conflict of interest.

96) On one occasion in March when the plaintiff visited the offices of defendant ARIF with defendants MINH and LUU, the plaitniff observed double representation, conflict of interest and attempts at trickery and deceit by the defendant ARIF that led him to believe that he should not trust the defendant ARIF.

97) On this occasion the plaintiff refused to shake hands with the defendant ARIF. When the plaintiff had done this, the defendant THACH said tot he plaintiff, speaking all this time in English and not Vietnamese, that now we will straighten it out about the gas station. We will work together to locate the money to put in the gas station. Vo has no money the defendant THACH explained but if the plaintiff would sign a contract selling the gas station "business" to the defendant VO for one dollar, then he, the defendant THACH would go to "his" bank

(meaning the McLean Bank which he had previously held himself out as the owner of,) and get the money the gas station neededd, maybe two, three, four hundred thousand dollars ($200,000.; $300,000.; $400,000.).

98) Plaintiff replied to this by asking to see the contract. The contract was handed to plaintiff by the defendant ARIF who had it on his desk and who had prepared it in the version thus presented. It was drawn on the stationery of the defednant ARIF and, as with an earlier fraudulent note for MINH and LUU that plaintiff had seen him present, had been prepared by the defendant ARIF in several copies. Defendant ARIF gave a copy each to the defendants VO and THACH, himself and the plaintiff.

99) Plaintiff saw the contract was a proposal for him to sell the "business" of the gas station including his lease with

Sunoco, his franchise with Sunoco, all his statements to and agreements with Sunoco, his receipts from Sunoco, his insurance certificate, his sales tax exemption certificate, his UCC financing statement, in short all of the documents of his ownership in the franchise and lease, all for one dollar. Plaintiff, though not a lawyer, knew that this was a) an attempt at an unconscionable bargain and extortion and robbery following the threats of death against him, and b) that he could not sell all of these documents that were in his name without the permission of Sunoco and other the parties who had given them to him.

100) Plaintiff said, after reading the proposed contract to sell his business for one dollar: "I'm not going to sign it." Plaintiff also informed these defendants at that time that without defendant Sunoco's permission he could not sign such

an agreement in any case.

101) At this time the defendant ARIF said that, yes, he had read the Sunoco franchise agreement, and that was right, that the plaintiff could not sign such an agreement without the permission of the defendant Sunoco. Nonetheless he participated on this occasion and continued to participate thereafter in the continuing attempt to rob, defraud and extort the plaintiff in a pattern of racketeering activity.

102) When the defendants VO and THACH heard this, they said that it was just between the parties present and Sunoco did not need to know about it.

103) The plaintiff said: "Well I cannot sign this." And he left.

104) On the next day, the 27th, the defendant VO called plaintiff on the telephone, saying that the defendant THACH wanted to see them both. The plaintiff

asked sharply: "See me for what ?" The defendant VO said he (the defendant THACH) wants to help us to have some kind of money. The plaintiff replied that well, for the money he would come. Defendant VO then told the plaintiff that the defendant THACH wanted to meet them both at his house that night.

105) The plaintiff said: "If he (the defendant THACH) has some kind of money, I come." The conversation ended.

106) That afternoon early, just after lunchtime, the defendant THACH called the plaintiff at the Mekong Center. The defendant THACH when he called on this occasion was very apologetic to the plaintiff and he particularly apologized for the way he had acted with the defendant VO toward the plaintiff the previous day. "We are the brothers," he said, "Why we hurt each other ?" The defendant THACH then said: "I want to

invite you and VO to come to my house this evening to eat dinner with us. I want to help both of you to have some kind of money." (translation into English). The plaintiff said: "What kind of money you talking about." (translation). The defendant THACH then said that he was talking about money to help you and the defendant VO for the gas station. The plaintiff then told the defendant THACH that he would come that evening about 10 or 10:30 O'clock PM. The plaintiff called his wife at this time and she was afraid and warned him not to go to the meeting because she was afraid since the plaintiff had told her about the death threats of two days before. Plaintiff decided to go anyway.

107) That evening plaintiff went to the home of the defendant THACH in Springfield, Virginia, at the above address. When he arrived there the

defendants THACH and VO were there along with DI, the defendant THACH's bodyguard, the man GIANG who had been at the gas station two days before when they threatened him with death and another man whom plaintiff did not know but who was introduced to plaintiff at this time as the brother of the Four Star General Khiem. This last man introduced himself to the plaintiff very cordially.

108) Immediately after the cordial introduction with the man who was introduced as the brother of Four Star General Khiem, the parties sat at the dining room table. The defendant THACH produced a copy of the same contract which they had produced at the office of the defendant ARIF the day before. At this time the contract was still on the letterhead and stationery of the defendant ARIF.

109) At his time the defendant THACH

started talking about how he, the defendant THACH was "strong" and the defendant VO was strong and how the plaintiff was also "strong" and how all we "strong" Vietnamese need to work together and everybody will be strong. The defendant THACH stated that there was no reason why only the Italian mafia should be strong but that the Vietnamese should be strong also and that there was no reason why the plaintiff should not join in with them and they could all make money together.

110) The defendant THACH explained to the plaintiff that since he, the defendant THACH, was president of the bank, the plaintiff could not get the money for the gas station out of the bank or from anywhere else without his, the defendant THACH's, approval and help. Thisis the opportunity to get the money out, the defendant explained to the plaintiff and

he demanded to know why the plaintiff was holding up the opportunity.

111) At this time the plaintiff told the defendant THACH in front of the others: "I told you yesterday that I will not sign the contract. Sunoco will not allow me to sign the contract." The defendant THACH at this time told a fraudulent tale of woe about the defendant VO who was sitting there but who said almost nothing during the exchange of words that followed. The defendant THACH said to the plaintiff in front of the others at this time: "Why do you lie to us Mr. Hoai, you promised to gie the station to VO as a gift." (this whole conversation was in Vietnamese) To this the plaintiff replied in disbelief: "What gift ? I am not crazy to give away a hundred and thirty-nine thousand dollar ($139,000.) gas station free."

112) The defendant THACH said: "You lie to us, uyou lie to us, motherfucker." The

defendant THACH accused the plaintiff of "destroying the family of [the defendant] VO" by lying and not giving the gas station to the defendant VO. This tactic was so ludicrous it almost made the plaintiff laugh even though he was scared. The plaintiff said that the defendant VO's home life was his concern and that he had nothing to do with any divorce between VO and his wife. They put the money in, the defendant THACH replied, and now you not give them the gas station. The plaintiff replied that he did not know about any putting the money in, all he knew was that defendant VO had agreed to loan him thirty-five thousand dollars ($35,000.) out of one hundred thousand dollars ($100,000.) which the defendant VO had insisted many times that he had on hand.

113) To this the defendant THACH again said: "you lie to us." He told the plaintiff "We have enough money to burn

your life. (translation into English) Fuck you." The plaintiff replied: "Well, go ahead." The defendant THACH said: "It won't be on my hands. You could have an accident. I do not need to use my own hand to kill you at any time. Someone will do that for me. If we kill you we have many different ways. the law cannot get anything on us." The plaintiff said: "Go ahead." And he got up and left. No one said a thing. No one rose. All sat and laughed hysterically as he let himself out the door. During the entire conversation the defendant VO sat there with a funny smile on his face, agreeing and smiling and grinning at everything the defendant THACH said. From the beginning of this encounter the defendant THACH had been plying everyone with expensive drinks such as V O whiskey, Hennessy Cognac and other expensive brands.

114) Previously, on one of the

plaintiff's visits to the house of the defendant THACH one evening, before the plaintiff was notified by John Pendergast that the check to Sunoco for gasoline had been returned, about the same time that the defendant THACH informed the plaintiff that the defendants MINH and LUU had instructed him not to get loan application for the plaintiff for the Mekong Center food store loan, the defendant THACH had told plaintiff, which plaintiff didn't quite understand at the time about how "strong" a person he, the defendant THACH, was and about how he knew how to handle the people and get his way, and about how he had held a gun to the head of Tuyen Giang, the owner-editor of the Vietnames language advertising newspaper, the Vietnamese Washington Post and how that gentleman had gotten down on his knees and begged for his life.

115) The next day the plaintiff went to

the Mekong Center food store with his wife. About 11:30 AM the defendants VO and THACH came to the food store. THACH and VO approached, all smiles, and the defendant THACH said they wanted to invite the plaitniff upstairs to eat with them.

116) Plaintiff went upstairs to the restaurant of the Mekong Center and sat down with the two defendants. At this time the defendants THACH and VO executed another fraud and deceit upon plaintiff upon which he relied to his detriment. They proposed a plan whereby they would help the the plaintiff and his wife get the lease for the food store that defendants MINH and LUU had promised plaintiff and his wife. They never meant to help plaintiff but only to entangle him further, which they did by deceiving him, through further representations over the telephone, and more deceit, into signing a thirty thousand dollar note, extorting

from him the "one dollar contract" for the gas station and "giving him" a fifteen thousand dollar certified check which they then deceived him by a combination of fraud and overhanging threats of violence into signing over immediately to the defendants MINH and LUU with whom THACH and VO had been in conspiracy all along, as three quarters of the "purchase price" for the Mekong Center food store.

117) By the time the plaintiff and the defendants THACH and VO were finished eating plaintiff noticed for the first time that there were unusual numbers of the defendant "cowboys" in the restaurant that day, 4 or 5 tables full, whereas on most days[line missing, apparently dropped by computer in transitioning from one page to the next in original] many cowboys in the restaurant that there was no one else other than the defendants THACH and VO and the 4 or 5 tables of the defendant

"cowboys." These "cowboys" are young male ethnic Vietnamese ranging in age, who hang around, and are used by the defrauders and extorters of the Vietnamese community, such as defendants THACH, VO, MINH and LUU, as their "street muscle" in their pattern of racketeering activity. Some of these cowboys, such as the man Hai Den, were known to the plaintiff because of their propensity and reputation for intimidating people and beating them up and he knew of their reputation for violence andfor roughing people up and strong-arming them.

118) At this time the defendant THACH aid, as he looked out at the cowboys whom the plaintiff was obviously noticing: "Let me show you how I know people," he said, "I can get them to do what I want. These 'cowboys' have killed many people; they can do with them whatever they want. If you need to kill someone, just tell me and

they will kill them." The plaintiff replied that he did not need to kill anyone, he had not done anything. Defendant THACH then said: "Later on, you never know." Then the defendant THACH made a big point of going, in front of the plaintiff, and shaking hands and exchanging friendly greeetings with many of the "cowboys" who were sitting at the tables.

119) The next day the plaintiff and his wife were told by the defendants THACH and VO that defendants MINH and LUU would sign the promised lease for the plaintiff andhis wife if the plaintiff and his wife paid defendants MINH and LUU fifteen thousand dollars ($15,000.) to pay off a bounced check which the latter had given to the American Service Center for their Mercedes. This was simply another fraud and le to an alternating pattern of fraud and threats of violence as set out in the

attached affidavit. It was as a result of this pattern of wire fraud and extortion and threats of violence that plaintiff was induced ultimately to enter the exortionate credit transaction whereby he was tricked into signing a thirty-thousand dollar note for which the only thing he received was a fifteen thousand dollar certified check which he was defrauded into handing over to MINH and LUUwho still did not give him the fraudulently promised lease.

120) It was also in this part of the pattern of racketeering activity engaged in by the defendants that plaintiff was extorted and defrauded into signing the illegal contract whereby he was supposed to be selling the gas station business to VO for one dollar. The details of these further threats of violence and the fraud involved and exactly how they led to the interweaving of the defrauding and

extortion of both businesses by the defendants and the exposure of the fledgling organized criminal entity that had grown up among the defendants is told in the allegations of the attached affidavit.

121) After the threats against the plaintiff's life were made to plaintiff as the gas station on the 26th of April as alleged above, the plaintiff noticed a definite change in the way he was treated by the personnel manning the gas station, all of whom by that time were the individuals brought in by the defendants VO and THACH. On all but a few of the days from the 26th of April up through the next several weeks. plaintiff went to the station but it became clear to him that the employees had been instructed not to do anything he asked them to do or talk to him because they did in fact refuse to do anything he said and refused to talk to

him except for few noncommital monosyllabic responses. The defendant VO had taken over his chair and desk in a way that all would notice and very visibly was supplanting plaintiff as if he, VO, were the plaintiff and the legal lessee and franchisee of the station.

122) Plaintiff signed the "one dollar contract" under extreme duress and threats of physical violence to himself and his family. It was robbery and extortion in the most literal meaning of those terms and it was coupled with a large number of additional frauds.

123) From May 3, 1986, until May 15, 1986, plaintiff went to the station every day for two or three hours only. During this time the employees, whom the defendant VO had brought in, were hostile to plaintiff. They would let the plaintiff sit in the chair he had occupied and use the phone. But all would stare at the plaintiff and say nothing. If he spoke to them, they would either not reply or would say, "We are working now, don't bother us," or something similar, and turn away. They had been instructed to act as if plaintiff was not there.

124) On these days, the plaintiff saw others in the station, young ethnic Vietnamese who made no effort to do any work of the station. They just hung around. Several of these he recognized as having been among the "cowboys" who were in the restaurant occupying 4 or 5 tables back on the morning of April 28, when the

defendant THACH made a display of shaking hands with and greeting the "cowboys" and told the plaintiff how they could kill people. One of these "cowboys" the plaintiff recognized as having been in the restaurant that day he heard called by the name of Minh by some of the others. When plaintiff was in the station on one of these days, an older ethnic Vietnamese man whom he knew by sight came into the station to get some work done on his car and plaintiff asked him if he knew the one known as Minh, pointing out that "cowboy." The man told plaintiff that Minh was a very bad guy who had been a problem with a record at the police station who was known at the court house in Arlington.

125) On or about the 3rd or 4th of May, plaintiff was sent by his wife to shop at the Saigon Market. He had with him his son who was two and a half. As he left the market out the rear door and was

starting down the sidewalk holding his son's hand, his way was blocked by three young Vietnamese males about 25 to 29 years old. One of them said: "Are you Mr. Hoai, we want to talk to you right now." "Stand right there," he ordered, pointing to a spot on the sidewalk, "We want to talk to you." The plaintiff, holding on to his son's arm very strongly, went to the spot pointed out and stood there. All three stood very close to the plaintiff staring at him in an unfriendly stare. The one doing the talking asked the plaintiff roughly: "How come you lie to THANH (defendant VO's given name) and THACH ?" Plaintiff said: "Please let me tell to all of you that I confirm that I did not lie to them." (This was all in Vietnamese.) Another one of the three said: "You sell the station to them and now you say you did not sell the station to them and you try to interrupt them.

Why do you try to interrupt them ?" The plaintiff replied: "I did not interrupt them. You can ask any Vietnamese people in this area and see if I have done any of them wrong since I came to this country. I have not done wrong to anybody." One of the "cowboys" then said: "You signed a contract to sell the station to them. Now you say you will not sell the gas station to them." Plaintiff said: "It's true I signed the contract for one dollar but I did that because they asked me to do that to help them to borrow money from the bank or THANH's father. Why would I really sell the station for one dollar when I tried to buy it and couldn't in 1980 for one hundred and thirty-nine thousand dollars." After more conversation in this vein the leader, who plaintiff felt maybe believed him and not what he had heard from VO, even though the others wanted to hurt him, allowed him to leave, saying

that he would check the plaintiff's story with THANH, as he called the defendant VO. Plaintiff felt very lucky to have gotten away unharmed and very frightened.

126) On May 15th plaintiff went to the gas station about 10 AM. There he was confronted by the defendant VO as he entered the office. Plaintiff was standing in front of the desk. VO was standing behind the desk. VO said: "HOAI, there is nothing here for you, none of your business. Better for you to get out and away from here or somebody will get you out." Plaintiff said: "The gas station belongs to me. All property here belongs to me, not you." The defendant VO said: "Fuck," and walked out the door saying "You will see who belongs to who." Standing outside, the defendant VO said "If you want to see your family you will get out, away from here now, or your leg will be broken." The defendant VO got i

his van and drove off. There were no "cowboys" in the station at this time, but plaintiff believed that the defendant VO was going to get some and he was frightened and he got in his car and left.

127) Plaintiff went home for a while. After a while he went to see his wife at the Mekong Center food store. they did not know what to do. The next weeks they worked on trying to get the Mekong Center food store situation straightened out as alleged in the subsequent count, but the extortion of that business from them was completed on the 28th of May as alleged below.

128) Subsequently, the plaintiff learned that the defendant had robbed from him also, by fraud and false representation, the business and trade name which plaintiff had originated, the name of the defendant SUNTECH SUNOCO, INC., and that defendant VO had used all along the moneys

he obtained by the fraud and extortion from the plaintiff and his business to obtain by fraud and deceit occupancy and other business licenses to which the plaintiff was entitled and obtained them instead by these frauds and deceits in the name of himself, the defendant VO, as if he, the defendant VO, were the legitimate owner, all based on the documents that he obtained by fraud and extortion as set out herein.

130) Thereafter, the defendant VO did hold out to all and sundry, falsely and fraudulently, without revealing that he had in fact obtained his control of the station by fraud and extortion, that he, the defendant VO, was the owner of the gas station business and the lessee and franchisee of Sunoco and committed further fraud and extortion as set out in the following paragraphs and counts, completely depriving the plaintiff of his

gas station franchise and lease despite the best efforts of plaintiff to rectify the station, get his station back and mitigate the damages to plaintiff and his business. VO was joined and reinforced in these representations by the defendants THACH, ARIF, MINH and LUU.

131) During the time that he exercised control of the gas station business, from mid-April when he and the defendant THACH first made extortionate threats of violence against the plaintiff and his family on, the defendant VO, who was not properly qualified and trained, whether by formal training or experience or otherwise, to run a gas station, and who was a violent and irresponsible and reckless person in any case, made a mess of the gas station, kept no proper records, did not obtain all the necessary licenses, even fraudulently, did not have proper bonding and insurance, failed to

keep proper payroll and other business records, violated the terms of the lease and franchise agreements with Sunoco which he had appropriated from the plaintiff, engaged in, and allowed others to engage in, improprieties with the help, "joyrode" a customers car that was in for repair, leading to an accident, and otherwise destroyed and damaged the gas station business, franchise, lease and dealership of the plaintiff beyond repair, doing much damage to the business and business reputation of the plaintiff because of plaintiff's being the actual franchisee and lessee.

132) This was not the first time that the defendant VO had engaged in such a scheme or pattern of racketeering activity consisting of fraud and extortion. After the acts of fraud and extortion recounted herein had been committed by the defendants and had resulted in plaintiff

losing his gas station business and in that business being severely damaged and his reputation being damaged, the plaintiff called a man whose hot dog van he had once repaired when he ran the body repair shop on Capitol Hill described above. This man's name is Mr. Hy and he also is an ethnic Vietnamese. When the plaintiff contacted Mr. Hy, Mr. Hy told the plaintiff of the attempts by the defendant VO, using the cowboys, to take from them their hot dog vending business and control by fraud and threats of force and violence the best locations for hot dog and refreshment vending in the District of Columbia such as at the Air and Space Museum on the mall. In this scheme of fraud and extortion there were fraudulent representations of defendant VO's being a public official known as the "liason" with the D.C. police in charge of assigning vendor locations for the D.C.

government, a representation as fraudulent as, and remarkably similar to the representation in this instance that the defendant THACH was the owner and president of the McLean Bank. There were death threats sent through the mail. There was both actual collusion with at least one police officer, and fraudulent representations of collusion with and control over others. In essence it was the same combination of fraud using the telephone and sometimes using the mail with extortion that is seen in the present instance.

133) On May 27 and 28, the defendants MINH, LUU and THACH, along with the defendant "cowboys", by a similar process of fraud and extortion to culminate the pattern of such activity alleged above, took from the plaintiff and his wife the control of the Mekong Center food store and cut off plaintiff from retrieving any

of what he and his wife had invested in that business.

134) There were additional acts in the pattern of racketeering activity of these and the other defendants involving one or more of mail or wire fraud, extortion, extortionate credit transactions, interfering with commerce, or bribery.

135) All of the above acts of fraud and those set out or summarized in this count or the attached affidavit relied upon or incidentally used wire fraud as described in 18 U.S.C. 1343 and referred to in 18 U.S.C. 1961, or, in a few instances, mail fraud.

136) All of the above acts of fraud and extortion and others summarized or incorporated herein constituted interference with interstate commerce as described in 18 U.S.C. 1951 and referred to in 18 U.S.C. 1961.

137) The taking of the gas station lease

and franchise from the plaintiff by fraud and extortion as set out herein was set up and enabled by the extortionate credit transaction of defendants VO and THACH in which they intended from the outset to take back, within a year, a gas station lease and franchise worth in excess of one hundred and seventy-five thousand dollars ($175,000.) for loan funds which they put up between them of approximately ten thousand dollars ($10,000.), if that much. The thirty-five thousand dollar figure which the defendant VO represented that he was going to lend was a fraud and a deception. The defendant VO never put up any money of his own and the money put up for him in this scheme of fraud and extortion by the defendant THACH never amounted to more than the ten thousand dollars ($10,000.) put up on March 21, 1986, at the meeting with Ernie Peele in the form of cashier's checks plus whatever

money he put up to cover the dishonored check to Sunoco after plaintiff was notified on April 24 that the check for the gasoline had been dishonored. The supposed loan of fifteen thousand dollars ($15,000.) given fraudulently and extortionately for the thirty thousand dollar ($30,000.) note was a fraud and a deception in which no real benefit was allowed to plaintiff by defendants even though, constructively, he was entitled to the benefit of it in the form of the major part of the purchase price payment to defendants MINH and LUU for the Mekong Center food store business. Therefore, this was an extortionate credit transaction collected by extortionate means under the descriptions set out in 18 U.S.C. 891 and 892 as referred to in 18 U.S.C. 1961.

138) Similarly the "loan" from defendant VO (really VO and THACH) to enable

plaintiff supposedly to pay defendants MINH and LUU the fifteen thousand dollars ($15,000.) toward the twenty thousand dollars ($20,000.) purchase price of the Mekong Center food store business (Plaintiff and his wife had access to, and intended to supply the other five thousand dollars ($5,000.) of the purchase price in exchange for the lease as is more fully set out in the subsequent count.) was, in addition to fraud as set out above, an extortionate credit transaction and was collected by extortionate means in that it was intended from the outset that the defendants MINH, LUU, THACH and VO get back between them, as set out above, a business worth more than twice the money supposedly "loaned," inventory of the food store worth more than twice as much and a note they intended to enforce for twice the money of the "loan," all within a few months. The relation of this fraud,

extortion and extortionate credit transaction concerning the Mekong Center food store to the fraud and extortion of the gas station business was to deprive the plaintiff and his wife of their capital with which they otherwise could have sought to stop the fraud and extortion that deprived plaintiff of the gas station lease and franchise.

139) All of the allegations set out in this Count and including those incorporated by reference from the prior counts set out a pattern of racketeering activity as that term is used in 18 U.S.C. 1961, et seq., and form the basis of the specific counts seeking damages for the two separate portions of that pattern of racketeering activity as it culminated in the illegal fraud and extortion of the two businesses referred to herein from the plaintiff.

140) Plaintiff and Ernie Peele on behalf

of SUNOCO agreed that they would meet at the gas station on June 5, 1986, at 10 AM. Ernie Peele agreed that it was the plaintiff's station and that he and the plaintiff together would tell the defendant VO to get out of the station. Plaintiff said his lawyer would come with him which Ernie Peele agreed was a good idea. Plaintiff took with him to the meeting as his lawyer, defendant MY LINH SOLAND, whom he had retained to be his attorney on May 28, 1986, after he and his wife were locked out and extorted out of the Mekong Center food store business.

141) At approximately 9:55 AM on June 5, 1986, plaintiff and the defendant MY LINH SOLAND, met at the gas station. Defendant VO was there at the time. Ernie Peele arrived about five minutes after 10 AM. Ernie Peele, the plaintiff and defendant MY LINH SOLAND walked into the station office. Immediately the defendant VO

addressed the defendant SOLAND in Vietnamese, attempting to interfere with the attorney-client relationship between plaintiff and his attorney by reproaching the defendant SOLAND for being the plaintiff's attorney and asking her to be his, VO's attorney, as well as telling an obvious lie that he had given the plaintiff his wife to sleep with and what else did he have to do in order to get the station from plaintiff. Defendant SOLAND turned on plaintiff and asked him to justify this falsehood rather than defend her client against such a tactic. This is a mild example out of many of how the dual agency of this defendant continually prevented her from representing the plaintiff's interests effectively.

142) After further conversation and on advice of defendant SOLAND, who told plaintiff he would be killed if he stayed in the station, and despite orders of the

Sunoco area representative, Ernie Peele, that he stay, plaintiff then left the station.

143) As he left the station in the car of defendant SOLAND, as she requested, defendant SOLAND's conflicting clients (The dual representation was not known to the plaintiff at the time.) the defendants MINH and LUU, were in the station with defendants VO and THACH, all of them talking, as plaintiff could see through the glass, to Ernie Peele. With plaintiff waiting and isolated in her car, defendant SOLAND returned to the station.

144) Defendant SOLAND took part in this conversation, which plaintiff could see through the glass but not hear, for some time. Later plaintiff learned that the conversation consisted of lies told about him by defendants VO, THACH, MINH and LUU to Ernie Peele, which defendant SOLAND did not refute.

(b) MY LINH SOLAND

145) The other defendants couldn't have completed the fraud and extortion of the station without the wire fraud and aid of defendant MY LINH SOLAND on this occasion and subsequently.

146) Plaintiff first called defendant MY LINH SOLAND on the morning of May 28, 1986, after he and his wife had been locked out of their Mekong Center food business the evening before and the defendants MINH, LUU and THACH, assisted by "cowboys" and a fraudulent use of the police similar to that attempted in the gas station on the above occasion, had defrauded and extorted him and his wife of his Mekong Center food store business.

147) Defendant SOLAND associated in law practice with attorney Herman W. Lutz, whose offices are at 109 S. Fairfax Street, Alexandria, Virginia. She held herself out to the plaintiff and his wife

as being free to represent them in the matter of their problems with the defendants MINH and LUU, VO and THACH in connection with the fraud and extortion of the Mekong Center food store business and in the matter of THACH and VO's defrauding and extortion of the Sunoco lease and franchise which illegal acts were aided and abetted by MINH and LUU in their actions on June 5, 1986, and on other occasions, as aforesaid.

148) While defendant SOLAND was so holding herself out, and unbeknownst to plaintiff, she was, with attorney Lutz, on whose letterhead she appeared, representing defendants MINH and LUU. She never revealed this to plaintiff. He later found out about it from someone else and went to the Fairfax Courthouse and saw Lutz and Soland representing MINH and LUU on August 18, 1986.

149) When plaintiff called defendant

SOLAND on the morning of May 28th he called her at the Lutz offices. The bulk of plaintiff's subsequent negotiations with defendant SOLAND, and her misrepresentations to him that he relied upon to his harm, not knowing of her dual agency, were over the telephone.

150) From May 29 until June 11, the plaintiff kept asking the defendant SOLAND, calling her at her office every day, what she was going to do. She told the plaintiff that she was his lawyer and it wouldn't even require court action for her to get the defendants MINH and LUU to return the food store. She used a Vietnamese expression, she would "tear MINH's face off." This was a fraud and a deceit. SOLAND and Lutz were representing defendant MINH and/or defendant LUU during this period.

151) At the June 5 meeting at the gas station the defendant SOLAND told

plaintiff that she would go into the court the next day and get the defendants VO and THACH thrown out of the gas station "by the law," or in any case, no later than Monday, that she was a member of bar in the District of Columbia as well as Virginia and even in Maryland, that she was a very strong lawyer and the defendants VO and THACH could not escape her, and so on.

152) This was all a fraud and a deceit, misrepresentations designed to induce the plaintiff to rely upon them to his detriment, which he did. Defendant SOLAND was trying to further prevent plaintiff from obtaining effective relief, not help him as his attorney. She was not a member of the D.C. Bar and had no intention of going into court in D.C. and getting any injunction, order or other judicial relief as she represented. Threatening to not represent him unless he disobeyed Ernie

Peele's requests and instruction was advice designed not to help him save the station but to lose it to these defendants who were there, the entity including her clients, MINH and LUU.

153) Later that day plaintiff and his wife gave her a check for five hundred dollars ($500.) for each case as an initial retainer, or a total of one thousand dollars ($1,000.) At that time the defendant SOLAND had drawn up a form retainer agreement for the work on the gas station problem and another one for the work on the food store. In them the defendant SOLAND undertook to represent the plaintiff with regard to the two problems as separate undertakings, each at one hundred dollars ($100.) per hour. Plaintiff and his wife signed the agreements.

154) This was a fraud by defendant SOLAND. It was on the phone that she was

retained and the written contracts and payments confirmed the agreements reached over the phone. She knew in undertaking to represent plaintiff and his wife that she and/or Lutz with whom she was in partnership, represented the defendants MINH and LUU whose interests were diametrically opposed to those of plaintiff in these matters and misrepresented that she could represent plaintiff in order to induce him to rely upon her to his harm and detriment, which he did.

(c) Foundation For the Calculation of Damages Occasioned by the Pattern of Racketeering Activity, Including Profits Calculable With a Reasonable Certainty

__155) Plaintiff had run several gas stations in his career and had shown an ability, often under difficult conditions, to run them profitably and well, though, since he had run only small stations previously, the profits were not large and most of his income came from salary in the

closely held, family business.

156) In his prior work as a supervisor for the defendant SUNOCO, the plaintiff had gained a knowledge of marketing and strategy, pricing strategy, and of the varying station locations and their worth in the Washington D.C. area.

157) The success of the plaintiff in running his prior stations under the market and operating conditions he ran them under, the success of plaintiff in raising the volume of the Pennsylvania Avenue station in the few short weeks he was able to run it, even with the defendant VO improperly controlling the checking account and interfering in the hiring of the help and other crucial decisions, the traffic volume and this location, prior bargaining over this same franchise and location, the historic gallonage and sales figures, those achieved within the few months of

operation and those agreed upon between plaintiff and Sunoco, and many other factors, indicate that the worth of the gas station franchise and lease, which was destroyed by the pattern of racketeering activity, in terms of its market value, was in excess of one hundred and seventy-five thousand dollars ($175,000.), without regard for damage to the business under plaintiff's continuing operation and to the business reputation generally of the plaintiff and without regard to pain, suffering and mental distress inflicted upon the plaintiff and the members of his family by the threats of death and bodily harm.

158) Throughout the scheme and pattern of racketeering activity set out above, the defendants VO and THACH and ARIF in particular, in connection with their fraud and the fraudulent representations which were essential to and connected with that

fraud, such as that defendant THACH was a banker, that defendant THACH was "the" owner and president of the McLean Bank, that the defendants VO had a large construction business, that the defendant THACH had a large construction business, that defendant ARIF had negotiated on behalf of the defendants THACH and VO and had drafted for them a legitimate contract, free of extortion and fraud, which the plaintiff had then dishonored, and so forth.

159) In addition, defendants VO, THACH and ARIF engaged in acts and representations, many of which are set out in the allegations above or in the attached affidavit, deliberately designed to damage plaintiff's business and business reputation with the Sunoco. This included such things as the imposition of the parking and business of the hot dog trailer upon the plaintiff against his

will, the manipulating of the gas station bank account to cause the check for the initial gasoline delivery to be dishonored, the interference with the U.S. mail to prevent the plaintiff from receiving the registered or certified letter from Sunoco, false representations about plaintiff's business habits and abilities, his absenteeism, to Sunoco, members of the Vietnamese community, to business associates such as the plaintiff's longtime insurance man, and many other such things. The allegations above about the three "cowboys" who confronted plaintiff and threatened him with bodily harm is one example. Another is what was said at the June 5, 1986 meeting at the station referred to above. There are many others.

160) For example, at the meeting on June 5 referred to, defendant THACH, supported by VO, told the outrageous lie to Ernie

Peele that the plaintiff had stolen one hundred thousand dollars ($100,000.) from the sister of THACH, a fabrication for which there is no support whatsoever. Another example is in connection with recordkeeping. Defendants THACH and VO operated out of a briefcase, literally, and kept no records or records of such a primitive nature in this and any other of their "scams" or enterprises that they can be said to ignore the ordinary prudent requirements of business recordkeeping in all that they do. Yet throughout this pattern of racketeering activity and up to this day, they attempt to cover this up by accusing plaintiff with groundless accusations of theft or destruction of records.

161) The defendant SOLAND, as we have seen from the behavior exhibited in connection with the outrageous lie of the defendant VO about his having given

plaintiff his wife to sleep with, though ostensibly representing plaintiff, went along with and gave credence to many of these misrepresentations and falsehoods.

162) The defendants MINH and LUU joined in and supported these lies to damage the plaintiff's business and business reputation and good will in connection with the gas station fraud and extortion on June 5, 1986, defrauded and extorted the food store business and its inventory whereby plaintiff was defrauded and extorted of his capital for the gas station business.

163) The defendant ARIF participated in this campaign of lies and slander to damage the business and the business reputation of the plaintiff in connection with his fraudulent representation of defendant THACH as a "banker" which was central to the scheme of fraud and extortion. This was in addition to his

central participation in the acts of fraud and extortion themselves. Later, on July 14, defendant ARIF was specifically put on notice by defendant SOLAND that defendants VO and THACH were threatening to kill the plaintiff and yet ARIF continued to lie and cover up his knowledge of the fraud and extortion.

(d) Allegations of Specfic Violations of RICO

164) All of these defendants, in carrying out the acts alleged under the fact conditions alleged herein (including the incorporated, attached affidavit) did receive income from the pattern of racketeering activity they engaged in before defrauding and extorting plaintiff of his two business and from the pattern of racketeering activity which they used to so defraud and extort plaintiff of his businesses. All participated in these patterns of racketeering activity as principals within the meaning of section

2, title 18, United States Code and used, or invested, directly or indirectly, a part of such income, or the proceeds thereof, in the acquisition, operation and/or establishment of these business interests which belonged to the plaintiff which affect, or activities of which, affect interstate or foreign commerce. This violated 18 U.S.C. 1962 (a).

165) The defendants, through a pattern of racketeering activity acquired or maintained, directly or indirectly, an interest in or control of the two aforesaid enterprises of the plaintiff, but particularly the said Sunoco lease and franchise, which enterprises affect or are engaged in interstate or foreign commerce in violation of 18 U.S.C. 1962 (b).

166) The defendants named herein are all employed by or associated with the fledgling organized criminal enterprise they have formed among themselves in the

process of carrying out a pattern of racketeering activity against plaintiff and others. This enterprise has no name yet, such as that of the defendant "cowboys" themselves, whom the other defendants wish to be, and the defendant "cowboys" wish to be, the "street muscle" of this fledgling entity. All the defendants have participated in the affairs of this fledgling entity to the harm of plaintiff in violation of 18 U.S.C. 1962 (c).

167) Defendants ARIF and SOLAND aided and/or abetted, counselled, or induced this pattern of racketeering activity involving a scheme of fraud and extortion and/or its constituent acts or some of them all in violation of 18 U.S.C. 1962 (a)(b) and (c) as set out above and have done so as principals within the meaning of section 2, title 18, of the United States Code.

168) All of these defendants or some of them, from time to time as set out specifically above or as alleged generally herein did conspire together to defraud of and extort from the plaintiff his gas station business in violation of 18 U.S.C. 1962 (d).

169) Subsequently, in the last part of August and continuing through September and October, defendants VO, THACH and ARIF, at a time when plaintiff was taking action to recover his business, did commit further acts of fraud using the telephone and the mails to aid, abet, counsel, command and procure this pattern and scheme of racketeering activity, including the filing of sham pleadings, and the spreading of lies constituting slander which further increased the damages to plaintiff.

170) The plaintiff, his wife, his mother-in-law, and his four small children

suffered great mental anguish, pain and suffering and emotional and mental distress because of the slanders and lies, the tormenting cruel "mind games" used to deceive him and his wife and destroy his businesses and business reputation, and from the constant threats of physical violence, alternated with promises to rectify the illegal acts, all of which were fraudulent, and the threats of bodily harm and death, and the false allegations of control of the authorities and powerful institutions affecting his businesses and business life, which he would otherwise expect to turn to, such as the McLean Bank, Sunoco, the D.C. Government agencies, the police, his insurance agent, and others.

171) As part of the pattern of racketeering activity defendants VO, THACH and ARIF, aided, abetted and counselled by defendants MINH and LUU, robbed the

(13)

88-765

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

APPENDIX III (Supplemental) PART E

Laurence A. Elgin *
John D. HEMENWAY
4816 Rodman St., N.W.
Washington, D.C. 20016

*Counsel of Record

17

CONTENTS OF THIS VOLUME OF APPENDIX III

(Supplemental) APPENDIX III

PART E

THE ORIGINAL COMPLAINT WITH WHICH THE AFFIDAVIT WAS INCORPORATED in the United States District Court for the Eastern District of Virginia, Alexandria Division.

HOAI v. VO, et al., CA 87-0294

(This is the 3rd part of 4 parts) pp 266-334

intellectual property of ownership of his business name and trade name for the gas station, SUNTECH SUNOCO, INC., through the formation of that corporation for unlawful purposes by these acts of fraud and extortion alleged above and other such acts and further fraud.

(e) Further Foundation of Damages

172) It is almost as a matter of course that a dealer and person experienced in the gas station business such as this plaintiff was before this pattern of racketeering activity was practiced upon him, will obtain a franchise such as this one after the one year trial period. This is the purpose and effect of the thorough screening of applicants for such lease and franchise businesses which is done by large oil companies which was done by Sunoco in this instance. The history of such lease and franchise arrangements and statistical evidence shows that in most

cases such "trial" arrangements result in ongoing dealer relationships that last upwards of twenty years.

173) In this case Sunoco worked with the plaintiff in the gas station business for years and knew him and his capabilities well. Indeed, Sunoco had informed plaintiff that in his case the one year trial period was only a formality and that there was no question but what he would become a permanent lessee and franchisee, or dealer. To this end plaintiff and Sunoco had negotiated and agreed upon target figures which were included in the contract between them with target dates that both parties knew could be achieved by plaintiff at the site in question.

174) The gas station on Pennsylvania Avenue, S.E., in the District of Columbia is a large station and a high-volume site because of its strategic location on a major traffic artery leading in and out of

the city in a neighborhood that "bottomed out" in terms of real estate values declining in the late 1970's and is now steadily increasing in terms of real estate values.

175) In 1980, when the neighborhood of the station had just "bottomed out" in terms of real estate values, plaintiff negotiated to acquire this station from the Sunoco dealer who then had it (Now a dealer nearby for another company.) for a price of one hundred and thirty-nine thousand dollars ($139,000.). At that time plaintiff was discouraged by Sunoco from completing the purchase of the business though Sunoco had no quarrel with that price but rather solely on the grounds that the plaintiff need not pay that money to buy from the prior dealer because that dealer was not an efficient dealer for Sunoco and, despite the fact that the then dealer in this station had

been with Sunoco many years they were hoping that the man would take the exceptional step of leaving the dealership and then the plaintiff could acquire the station by direct dealing with Sunoco at that time. Sunoco had offered plaintiff to be the dealer at other sites and locations in addition to the time that he was a Sunoco dealer in Greenbelt, Maryland, until he was defrauded and extorted of that business as alleged in the affidavit.

176) Under the prior dealership at the Pennsylvania Avenue Sunoco station, the monthly gallonage was on the average between eighty (80) and eighty-five (85) thousand gallons per month. When the plaintiff entered into the dealership that was defrauded and extorted from him by the pattern of racketeering activity described herein, the station had been closed since sometime in early January of 1986 or

thereabouts, or about three months.

177) The plaintiff and Sunoco, based on the historical gallonage of this station, and the known quantity between them of plaintiff's experience and abilities, agreed that plaintiff could in three to six months boost the gallonage of the station to over one hundred thousand (100,000.) gallons per month.

178) Immediately upon opening the plaintiff, even with defendants VO and THACH and ARIF interfering with the financhial arrangements and hiring practices of the station, was able to immediately sell at a rate of forty-five to fifty thousand gallons (45,000. to 50,000.) gallons per month.

179) In a few short weeks before the threats on his life and to his person and his family and the other activities deprived him of any semblance of management control of the station, the

plaintiff was able to get the station gallonage up to over sixty thousand (60,000.) gallons per month, showing that the calculations between the plaintiff and Sunoco in this regard were correct. Plaintiff and Sunoco were so certain of the correctness of this figure that they included in their negotiations and agreement an incentive plan under which, when the one hundred thousand gallons (100,000.) per month figure was reached, the plaintiff would receive a one thousand dollar ($1,000.) per month reduction in the figure which he was to otherwise pay monthly to Sunoco under the terms of the franchise and lease, which was set at four thousand and five hundred dollars ($4,500.) per month.

180) As a general rule in the gas station business the gross income from the items other than the sale of gasoline itself runs about sixty percent (60%) of

the gross income generated from gasoline sales. This other income includes the income from mechanical repair work (There are three mechanic's "bays" in the 2305 Pennsylvania Avenue, S.E., station.) and from the sales of oil and other fluids, tires, batteries and accessories (TBA) and other incidentals, (Cigarettes, candies, etc., which in this case were fraudulently and extortionately robbed by the defendants VO and THACH.) The defendants herein directly interfered with the plaintiff's hiring of mechanics and establishment of incidental sales. Nonetheless it is possible to estimate within applicable authority, from industry figures and practices and the past experience of plaintiff and Sunoco that the figure of sixty percent (60%) is accurate for this large station.

181) Sunoco has a company program under which it establishes at appropriate sites,

with its franchisees and dealers, a "C MARKET. Such a C MARKET is a convenience food store or "mini-market," placed in a station by agreement between Sunoco and the franchisee at that location. Sunoco has discovered, and industry experience proves, that when such a mini-market or C MARKET is installed at a location such as the one at issue, fuel sales increase between thirty-five and forty percent (35 and 40 %).

182) So in this instance, when the one hundred thousand (100,000.) gallon per month figure was reached as agreed between plaintiff and SUNOCO that the location and plaintiff's capabilities would enable, that figure would be increased further to one hundred and forty thousand gallons (140,000.) per month.

183) So confident were plaintiff and Sunoco of these figures that the Sunoco area manager, Ernie Peele, informed

plaintiff that he had already planned and initiated the paperwork for the installation of such a C MARKET in three to six months as soon as the one hundred thousand (100,000) gallon per month figure was reached and, further, as was standard, SUNOCO would pay for the building and installation and conformity to code and other regulations of the C MARKET building and that plaintiff would not have to pay any additional rent; plaintiff would still get the discount of one thousand dollars ($1,000.) per month and so for the franchise, lease, and C MARKET, plaintiff would pay a combined monthly payment of three thousand, five hundred dollars ($3,500.) per month. Plaintiff would have to stock the store with inventory under the agreement, which is standard.

184) Based on industry figures and the gallonage and traffic volume figures for the site and the market characteristics of

the neighborhood, the minimum gross sales of such a mini-market in this location would be in a range of from twelve hundred to fifteen hundred dollars ($1,200. to $1,500.) per day at the outset of such a business, with a minimum increase over a period of a year of another five hundred dollars ($500.) per day.

185) Plaintiff and his wife, as their experience in the Mekong Center food store business, in increasing its daily gross sales, from one hundred dollars ($100.) to eight or nine hundred dollars ($800. or $900.) shows, were well equipped by experience and capability to run such a C MARKET.

186) With the C MARKET and the capabilities and experience of plaintiff or any other similarly experienced and equally skilled operator, given the high traffic volume and the growth and development of the surrounding areas and

the areas linked by Pennsyvania Avenue, the station, absent the illegal activities of the defendants, could be reasonably expected, and the same can be calculated within relevant authority, to reach a gallonage figure within two years of one hundred and fifty to one hundred and eighty thousand gallons per month.

187) Altogether, but for the damages to the plaintiff, his business and business reputation, proximately caused by this pattern of racketeering activity engaged in by defendants VO, THACH, MINH, LUU, ARIF, SOLAND, and SUNTECH SUNOCO, INC., plaintiff's gas station business, lease and franchise, would have generated gross sales, including C MARKET sales starting after six months, of, in the first full year of operation, in excess of one million and four hundred and fifty-seven thousand dollars ($1,457,000.), in the second full year of operation, such sales

in excess of two million and eight hundred and nine thousand dollars ($2,809,000.) and in the third year and each year thereafter, in excess of two million and nine hundred and thirty-five thousand dollars ($2,935,000.) without regard to interest due plaintiff on any reward herein or any increment of growth or price increase after a two year startup period.

188) Over an average twenty-five years life of a dealership, this particular lease, franchise and dealership would have generated, absent the tortious activity of these defendants, in excess of eighty million dollars ($80,000,000.).

189) It can be shown that the gross profit of such a business, calculable and awardable in this instance under relevant authority as applied to the facts, would be according to the following formulae: gross profit on gasoline sales equals twenty-four percent (24%) of gross sales;

gross profits on oils, other fluids, TBA and mechanical work gross profit equals forty percent (40%) of gross sales; gross profit on C MARKET STORE sales equals thirty-five percent (35%). Plaintiff will so show.

190) That these resulting profits were not made on the volume of sales anticipated at the location was a natural and proximate result of the activities of defendants complained of.

WHEREFORE, on this count III plaintiff prays for damages as follows:

I. For the pattern of racketeering activity culminating in the fraud and extortion of the gas station and proximately caused by the defendants VO, THACH, MINH, LUU, ARIF, SOLAND, and SUNTECH SUNOCO, INC., and against each and every one of them, jointly and severally, for direct damages, for directly investing the gas station's own proceeds, as

appropriated by wire fraud, robbery, extortion, or interference with commerce in violation of 18 U.S.C. 1961(a) to acquire, establish or operate the said business consisting of the station lease and franchise, or for acquiring or maintaining, directly or indirectly, interest in or control of the station lease and franchise affecting interstate or foreign commerce in violation of 18 U.S.C. 1962(b), or for conducting or participating in, directly or indirectly, the conduct of the affairs of the fledgling organized crime entity described herein, through a pattern of racketeering activity to the harm and detriment of plaintiff in violation of 18 U.S.C. 1962(c), and/or for conspiring to do any of these things in violation of 18 U.S.C. 1961(d), in excess of twenty-five million dollars ($25,000.000.), and, in addition thereto,

II. For the pattern of racketeering activity under these same statutory sections culminating in the fraud and extortion of the gas station and proximately caused by the defendants VO, THACH, MINH, LUU, ARIF, SOLAND, and SUNTECH SUNOCO, INC., and against each and every one of them, jointly and severally, for damages to plaintiff's business, good will and business reputation, in the nature of slander as well, in excess of twenty-five million dollars ($25,000,000.) in addition to the direct damages specified above, and

III. For the pattern of racketeering activity culminating in the fraud and extortion of the gas station in violation of the said statutory sections and proximately caused by the defendants VO, THACH, MINH, LUU, ARIF, SOLAND and SUNTECH SUNOCO, INC., and against each and every one of them, jointly and severally, and in

addition to the two types of damages specified in prayers I. and II. above, damages for pain, suffering and emotional and mental distress proximately caused by these defendants in an amount in excess of ten million dollars ($10,000,000.), and

IV. for attorney's fees occasioned and proximately caused by the pattern of racketeering activity engaged in by these defendants in defending against fraudulent activities and sham pleadings engaged in by these defendants as part of that scheme and pattern, against each of these defendants jointly and severally, in excess of one hundred thousand dollars ($100,000.) as estimated to complete the defense and removal and nullification of those fraudulent and sham pleadings.

V. total damages under this Count III, before trebling under the statutory provisions of 28 U.S.C. 1964 (c), in excess of sixty million and one hundred

thousand dollars ($60,100,000.) and

VI. For the above damages trebled under the said provision of 28 U.S.C. 1964 (c) a total in excess of one hundred and eighty million and three hundred thousand dollars ($180,300,000.) plus,

VII. The costs of attorneys' fees under the above statutory provision estimated to be in excess of three hundred thousand dollars ($300,000.) in order to successfully prosecute this case against this complicated pattern of racketeering activity and the other costs and fees of this suit, all in all

VIII. a total in excess of one hundred and eighty million and six hundred thousand dollars (($180,600,000.) plus the following equitable and declaratory relief:

IX. Preliminary and permanent injunctions ordering these defendants VO, THACH, MINH, LUU, ARIF, SOLAND, and

SUNTECH SUNOCO, INC., and the COWBOYS or any of them to refrain from directly or indirectly threatening or attempting to intimidate in any way with threats of violence or bodily harm this plaintiff or any member of his family, his friends, associates, attorneys, and any witnesses named herein or individuals who were involved in these events set out in these allegations upon penalty of being immediately held in contempt of court for so doing.

X. Preliminary and permanent injunctions ordering these defendants VO, THACH, MINH, LUU, ARIF, SOLAND and SUNTECH SUNOCO, INC., and the COWBOYS or any of them or anyone directed by them or their agents to refrain from directly or indirectly disparaging, misrepresenting, slandering, repeating or originating false allegations with regard to the plaintiff, his business ability, the so-called "contract" obtained

extortionately and unconscionably to take the gas station from him for one dollar, or saying that plaintiff is or was a liar or lied with relation to any of the events described herein or that his business abilities are not good or in any other way attacking his business or business reputation upon penalty of being found in contempt by the court.

XI. Preliminary and permanent injunctions ordering the defendants VO, THACH, MINH, LUU, ARIF, SOLAND and SUNTECH SUNOCO, INC., and the COWBOYS or any of them to refrain from directly or indirectly representing to anyone that the defendant THACH is a banker or owns or is an officer of any bank or ever has been, or that the defendants THACH or VO own or ever have owned or been officers of any construction company or that the defendant THACH is or ever has been an attorney, or that the plaintiff or any of his attorneys

have ever been put in jail or that the defendants VO and THACH did not threaten the plaintiff and his family with death and bodily harm in order to extort his business interests from him.

XII. An immediate declaratory judgment declaring the "one dollar contract" claimed by VO and THACH invalid as a matter of Virginia contract law and a preliminary injunction ordering the defendant VO to stay away from the gas station in question at 2305 Pennsylvania Avenue, S.E., pending the outcome of this case and to not approach within one mile of that location and to not telephone the station and to not talk to, write to or otherwise communicate directly or indirectly with anyone employed in or in connection with that station and to not communicate directly or indirectly with anyone who does business with the station as a supplier, wholesaler, insurance

provider or any other capacity and to cease paying any money to or promising to pay any money or thing of value to anyone directly or indirectly in connection with the station except as necessary to the preparation of the defense of this lawsuit, and the same for the defendants THACH and ARIF and permanent injunctions to the same effect thereafter.

XIII. Preliminary and permanent injunctive relief ordering the various government regulatory bodies involved, such as the D.C. Department of Licensing and Inspections and Recorder of Deeds office from recognizing in any way the defendants THACH and VO as being in any way owners, partners, officers, managers or other principals of the gas station in question or any entity affiliated with it such as the defendant SUNTECH SUNOCO, INC., and ordering them to vacate and treat as void all certificates, licenses,

permits or other official documents obtained by these defendants or any of them as a result of the fraud and extortion and pattern of racketeering activity complained of herein.

XIV. Preliminary and permanent injunctive relief ordering the seizure for the benefit of the plaintiff of any and all businesses and assets purchased or otherwise paid for (as by rental payments or deposit) in whole or in part out of the proceeds or benefits of the pattern of racketeering activity complained of herein.

XV. Preliminary injunctive relief immediately freezing all assets including inventory and bank accounts of the defendants or any of them in connection with the business of the gas station in question and the defendant SUNTECH SUNOCO, INC., particularly freezing any account in the McLean Bank of McLean, Virginia, and

ordering the production of all records of that bank with regard to VO and THACH and SUNTECH SUNOCO, INC. (or SUNTECH CORP. or any variation thereof) and ordering immediate inventory of the gas station assets and production of all its records and accounts.

XVI. Such other and further equitable and legal relief as to the Court shall seem just and proper.

COUNT IV: RICO: WIRE FRAUD, ROBBERY AND EXTORTION OF THE BUSINESS AND BUSINESS INTEREST OF THE PLAINTIFF AND HIS WIFE IN THE MEKONG CENTER FOOD STORE: INTERFERENCE WITH COMMERCE

191) The plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 190) above.

192) A fraud, robbery and extortion was perpetrated upon plaintiff on the evening of May 2, 1986, by defendants MINH, LUU, VO and THACH at the condominium home of MINH and LUU, in which the plaintiff was tricked and compelled to turn the alleged "loan" to him of a certified check made out to plaintiff in the amount of fifteen thousand dollars ($15,000.) over to defendants MINH and LUU by the then omnipresent and continuing threats of VO and THACH and the defendants holding this course out to him, under duress and threats of violence as to other avenues, as the only economic alternative for him

to pursue.

193) Plaintiff had been deceived, defrauded and extorted into signing a thirty thousand dollar note, and the only thing he had in exchange that he could hope to do anything with was the claim that he had paid fifteen thousand dollars ($15,000.) of the agreed upon twenty thousand dollar ($20,000.) purchase price of the Mekong Center food store business to defendants MINH and LUU as part of the transaction by which he had been so defrauded and extorted as part of an extortionate credit transaction.

194) This supposed loan of the fifteen thousand dollar certified check to be paid to defendants MINH and LUU was in itself an act of extortionate credit and extortionate collection of debt in that VO, THACH, MINH and LUU never intended to actually lend the plaintiff thirty thousand dollars ($30,000.) or even

fifteen thousand dollars ($15,000.) as represented, but only to establish a claim against him for the larger amount without ever actually letting him have any real benefit or use of even the smaller amount of money. This was later made evident to the plaintiff and his wife by further acts of fraud, deceit and extortion by these defendants.

195) Nonetheless, though the defendant and his wife knew that they had been badly deceived, defrauded and extorted, the plaintiff determined to see if he could at least get the long promised lease for the Mekong Center food store business signed now that he had, as he thought, given the defendants MINH and LUU fifteen thousand dollars ($15,000.) toward the twenty thousand dollar ($20,000.) purchase price which he and his wife and the defendants MINH and LUU had agreed upon. This was the only economic alternative left open to

him by the fraud, robbery and extortion of the defendants which did not appear to expose his family and himself to the threat of violent harm and death.

196) At the time plaintiff had access to, through his wife's family, another five thousand dollars ($5,000.) to complete the agreed upon purchase price of the food store business, now that the promised loan from "banker" THACH had turned out to be a fraud. But plaintiff was determined not to pay the last five thousand of the purchase price unless he could get the long promised lease signed.

197) At the May 2 meeting where the plaintiff was defrauded and extorted, defendants MINH and LUU told plaintiff that they were too upset to sign the lease that evening and said they would sign the lease tomorrow. This was the first of another series of fraudulent excuses, most of which were perpetrated on the phone,

from that meeting until May 27th. These frauds including pretending to lose the lease, objecting to it being in English instead of Vietnamese, then objecting to a version in both the Vietnamese and English languages side-by-side. Throughout this time these defendants continued to assure plaintiff that they intended to sign the lease as they had agreed but they continued to offer fraudulent excuses. Plaintiff relied upon their fraudulent representations that they intended to sign a lease but just couldn't at the time because of the various excuses, and he did so to his own detriment.

198) During the time from the 15th or 16th until the 27th, plaintiff informed the other owners of the shops or stalls in the Mekong Center that they had better help him get the defendants MINH and LUU sign the lease because plaintiff and his wife were desperate to get MINH and LUU to

fulfill their promises and sign the lease. Plaintiff and his wife informed the other shopowners of the essential terms of their agreement with MINH and LUU such as the twenty-thousand dollar purchase price and the lease and its term co-terminous with the master lease. MINH and LUU and the plaintiff and his wife had discussed these things in front of the other shopowners. When he prepared it plaintiff again told the other shopowners about these terms and showed them all the dual language version of the lease.

200) The plaintiff and his wife, as part of their agreement with the defendants MINH and LUU on which plaintiff and his wife, acting in reliance and good faith, had partially performed, had the only key to the overall building so that they had to be there to unlock the main door of the center before any other shopowners could get in the building to get to their stores

in the center. Now, in desperation, the plaintiff and his wife told the other shopowners that if the defendants MINH and LUU did not sign the promised lease in about a week they could see no other way to force that signing other than locking the main door and shutting down the entire center until the defendants MINH and LUU signed the lease for plaintiff and his wife as promised. Though they stood to lose money themselves the other store owners agreed that this was the only thing that plaintiff and his wife could do under the circumstances.

201) The other shopowners of the Mekong Center agreed to communicate and did communicate to the defendants MINH and LUU during this period that things had come to this desperate situation and urged MINH and LUU, or so plaintiff and his wife have it on information and belief from what the other shopowners told them, that they

ought to sign the lease that they had for so long promised to the plaintiff and his wife.

202) The plaintiff's wife was telephoned at the Mekong Center food store on the morning of May 27th by the defendants MINH and LUU who told her that they had decided to sign the lease that evening. Overjoyed, she called plaintiff to the phone. LUU told plaintiff that she and MINH wanted the plaintiff to come to their condominium that evening after closing the store in order that LUU and MINH could sign the lease for the plaintiff and his wife. The plaintiff readily agreed and hung up, thanking the two defendants and assuring LUU that he and his wife would be there.

203) Overjoyed, the plaintiff went around and told the other shopowners that defendants MINH and LUU had agreed to sign the lease that evening. "We have our

lease," he told them, "It will be signed tonight. Tomorrow we'll have a party," he told them. All the other shopholders congratulated them.

204) This telephone call was an act of wire fraud, designed to falsely promise the lease signing, which defendants MINH and LUU had no intention of carrying out, in order that the defendants MINH and LUU might set up the final extortion of the ownership of the plaintiff in his wife in the food store business which they had established by their partial performance in reliance on the promises of the defendants MINH and LUU and their payment of the bulk of the purchase price in the manner aforesaid and to rob the plaintiff and his wife also of the inventory which they had purchased for the business.

205) Plaintiff and his wife, anticipating a possible breach of the agreement with MINH and LUU by MINH and

LUU had, wisely, as it turned out, insisted on the signing of a binding lease before, initially, paying any of the purchase price, and, then, pursuant to the wire fraud and deception of defendants MINH, LUU, VO, THACH and ARIF as set out above, had insisted on it before paying the final five thousand dollars of the purchase price even when defrauded and extorted into paying the fifteen thousand dollar certified check that plaintiff had been "loaned" for the thirty thousand dollar note that had been obtained by fraud and extortion.

206) The misrepresentation designed to "set them up" for the final fraud and extortion was part of an interference with commerce by the defendants.

207) That evening defendants MINH and LUU further defrauded plaintiff and his wife by claiming that they could not sign the lease as proposed, promised and agreed

upon for so long because the master lease which they had with the owners of the Mekong Center building did not allow them to sublease and the landlord did not allow it.

208) Defendant MINH stated for the first time that the other shopkeepers did not have leases but only papers in the Vietnamese language and he said they would give the plaintiff and his wife a "management contract" paper in the Vietnamese language.

209) The plaintiff said that he had never done business in this country that way, that he and his wife had been promised a lease, that on that promise they had invested their money and built up the business and that they wanted the lease as promised.

210) MINH insisted that the only thing that he and LUU could give the plaintiff and his wife would be Vietnamese language

paper in the form of a "management contract." MINH then told the plaintiff and his wife terms of this "management contract" which were entirely different from all that the plaintiffs and these defendants had discussed previously.

211) The defendant MINH at this time proposed a whole new set of payments and conditions never before mentioned by these defendants in all of their many conversations with the plaintiff and his wife, as if the whole fraud and extortion with the fifteen thousand dollar ($15,000.) certified check and the fraudulent thirty thousand dollar ($30,000) note had never happened.

212) Defendant MINH told plaintiff and his wife that the cost of the "management contract" would be a total of thirty-two thousand dollars ($32,000.) broken down as follows:

A. A new payment of twenty thousand

dollars for the cost of the "management contract" as if these defendants had never received the fifteen thousand dollars ($15,000.) on May 2.

B. A payment of four thousand dollars "security deposit."

C. An additional payment of one month's "rent" on the "management contract" of four thousand dollars ($4,000.) where these defendants and the plaintiff and his wife had been talking of, and paying, a rent of two thousand dollars ($2,000.).

D. Still another payment of four thousand dollars ($4,000.) for the beat up old van of the food store. This old van, a 1976 Chevy Van, very beat up by accidents, was not worth more than five or six hundred dollars ($500. or $600.)

213) MINH told plaintiff and his wife that they would have this contract for one year and, if defendants were satisfied, they could have a "management contract"

for another year.

214) MINH said that if plaintiff and his wife did anything during the first year to displease MINH and LUU, they would kick them out of the Mekong Center and the only thing returned would be the four thousand dollars ($4,000.) "security deposit."

215) Plaintiff told the defendants that they did not want the "management contract" being offered by these two defendants, what the plaintiff and his wife wanted, the plaintiff said, was the deal that had been agreed upon all along, with a lease in the American language for the term of the master lease. We do not do business that way, the plaintiff told him, we want the lease in the American language because we want to be legal in this country and we want the two thousand dollar per month rent agreed upon.

216) MINH said that he and LUU could not do as the plaintiff and his wife wanted.

217) The plaintiff said, okay, that he and his wife would sell the business back to the defendants MINH and LUU and that they wanted back the fifteen thousand dollars that he had given to the defendants MINH and LUU on May 2.

218) Plaintiff suggested that they all meet the following morning at 8 AM and inventory the stock in inventory in the store and then the defendants MINH and LUU could pay the plaintiff and his wife the cost of the goods at wholesale which, plaintiff informed the defendants MINH and LUU, was between forty-nine thousand and fifty-two thousand dollars ($49,000. and $52,000.).

219) Defendant MINH said that he and the defendant LUU could take it over. We don't have that kind of money now, he said, but we can get it for you later. The plaintiff replied that that was fine and asked the defendant MINH to give him a

postdated check dated for whenever they had the money. MINH said it would be about a week but the defendant LUU then interrupted and said they needed the money for something else and it would be about thirty to forty-five days before the check would be good and the plaintiff said that would be fine.

220) The defendants MINH and LUU then said that they would settle everything and give the plaintiff such a check when the parties conducted the inventory the following day. The parties shook hands and the plaintiff and his wife left saying that they intended to stop by the food store on the way home and get the papers that they would need the next day in doing the inventory and that they would go over them in order to be able to do the inventory quickly. These papers were the record book that the plaintiff and his wife kept on their purchases and the

credit owed and receipts for the rents paid to these two defendants, invoices and all the other papers that the plaintiff and his wife had used in conducting the business.

221) Now, in fact, all of this was once again a fraud and a deceit. These two defendants had never had any intention of keeping their agreement and this act of fraud was a misrepresentation as to what the agreement had been, a flagrant falsification of the terms of the bargain between the parties which actual agreement the plaintiff and his wife had long since partially performed on.

222) These newly fabricated false terms were known by these defendants to be false and the entire act of inducing plaintiff and his wife to come to the condominium under the false pretext that the defendants were finally going to sign the lease that was proposed in draft by the

plaintiff to these defendants some time before and the terms of which had been agreed upon and discussed for months, this entire act was itself a fraud and a pretext, solely designed to make sure that the plaintiff and his wife were occupied away from the Mekong Center food store while the agent of these two defendants, Mr. Sat, set up things to complete the fraud and extortion of the food center business by locking the plaintiff and his wife out of their business. These defendants knew that the fraudulent terms that they were now proposing as if they had been the terms proposed before when in fact they were a radical change would be unacceptable to plaintiff and his wife.

223) This evening of May 27, 1986, after the plaintiff and his wife left the condominium of the defendants MINH and LUU, they proceeded to the Mekong Center only to find that the man Sat was there

waiting for them and the man Sat had changed the lock on the door to the Mekong Center so that the plaintiff and his wife could no longer enter.

224) Sat told plaintiff and his wife that on orders from MINH and LUU he had changed the lock and could not let them enter. The plaintiff told the man Sat that he was going to call the police. The man Sat told plaintiff that defendants MINH and LUU had already called the police and that if the plaintiff and his wife tried to enter the Mekong Center and tried to get to their food store business they, the plaintiff and his wife, would be locked up. The plaintiff believed this because of the times that the defendants THACH and VO had bragged to them that they had the police, in Arlington and D.C., on their side. During the gas station extortion, in May, when the defendants VO and THACH had the cowboys hanging around

the gas station during plaintiff's visits there, the defendant VO on one occasion also had with him a large, black American whom plaintiff had never seen before. This man was tough looking. Pointedly, in front of the plaintiff, the defendant VO had asked this man at the time: "You're off duty, aren't you ?" When this man replied that he was, VO said: "Good, good."

225) Plaintiff and his wife had to go home without the business papers of the food store. This was only a few days after the plaintiff had been again threatened with death and bodily harm for himself and his family at the gas station in connection with the fraud and extortion practised upon him in order to take over that business and he and his wife, when they got home, were very apprehensive. To both of them, this was beginning to look like a similar setup. They believed,

based on the past threats and encounters that in the morning at the Mekong Center there would be a combination of threats of force and the manipulation of the police by the defendants MINH and LUU and that THACH and possibly VO would be in it along with some of the cowboys. The plaintiff and his wife discussed the possible ways that the defendants would try and trick and intimidate them. They thought one of the defendants, for example, might try and fall over and pretend that the plaintiff had struck him and use that as a pretext.

226) Because of these fears and apprehensions engendered by the past behavior of the defendants THACH and VO, whom they now knew to be in league with the defendants MINH and LUU, the plaintiffs decided that the plaintiff's wife should not go to the food store the next morning and that the plaintiff should go early and hide in the store of their

friendly rival in the food store business, Mr. Tung, who owned the Saigon Market next door and from there the plaintiff could see what was going on next door without being seen.

227) The plaintiff got up early and went to the Saigon Market about 7:30 AM and positioned himself where he could see what was going on at the Mekong Center next door without being easily observable himself.

228) About ten or fifteen minutes before 8 AM, the plaintiff saw a red Chevrolet Camaro, with Texas license plates, the number of which he could not read, drive up in the alley behind the Mekong Center. It drove to the rear door and the driver parked it behind the rear door. Four youngish men, between 19 and 30 by their appearance, very strong looking, got out of the Camaro and went in four different places around the Mekong Center building.

Only one was in the rear where the plaintiff could still see him. He looked in the windows of the Mekong Center. He took up a position in the alley. The other three disappeared around corners of the Mekong Center building so that plaintiff could no longer see them.

229) The one young man remained where the plaintiff could see him, waiting. He was still waiting around quarter after eight or so when the car of MINH and LUU, the Mercedes from the American Service Center, pulled up behind the Mekong Center. MINH was driving. MINH parked the car and THACH got out of the car. MINH and LUU got out of the car as well. There was another man that got out, a large man. Later Mr. Tam, an employee of Mr. Tung went out and came back and told the plaintiff that this was the son of MINH and LUU, named Vinh. A few minutes later another car came and parked and the

daughter of MINH and LUU got out.

230) The rear door of the Mekong Center was secured at this time with the padlock that had been put on the night before to keep the plaintiff and his wife out and another, large padlock, to which plaintiff and his wife had the only key, a key which the defendants MINH and LUU had transferred to the plaintiff and his wife on March 11, 1986, when MINH and LUU had urged the plaintiff and his wife to enter the store and begin their new business because the day was auspicious.

231) MINH and THACH took a tire iron and parts of a car jack and what looked from a distance like a hammer and broke this larger lock. All these defendants and those with them then went into the Mekong Center.

232) About this time plaintiff noticed that the red camaro was gone. It had gone while he had been watching to see what the

defendants MINH and LUU and THACH and the young man were doing, and while Mr. Tam had gone out to see who the young man was.

233) As plaintiff noticed this, almost immediately after MINH, THACH and LUU entered the Mekong Center building, three police cars arrived with two officers each. The officers went into the building and a little later a fourth police car arrived. Plaintiff and his wife have it on information and belief that slanderous and fraudulent representations concerning themselves and their activities were made to the police department in summoning these officers and that fraudulent representations were made as to the ownership of the food store business.

234) The defendants MINH, LUU and THACH defrauded, robbed and extorted plaintiff and his wife of the inventory they had purchased, the business papers of the food store and the business itself in this

manner as a culmination of a pattern of racketeering activity as that term is defined in 18 U.S.C. 1961.

235) From this pattern of racketeering activity the defendants MINH and LUU received income, or proceeds from such income, which they used or invested, directly or indirectly, in whole or in part, in the acquisition, operation, or establishment of an enterprise, namely the Mekong Center food store as built up and stocked by plaintiff and his wife, which engaged in, or the activities of which affect, interstate or foreign commerce in violation of 18 U.S.C. 1962 (a). The other defendants, except for SUNTECH SUNOCO, INC., aided and abetted in this pattern of racketeering activity and were therefore principals therein under the definition of section 2, title 18, U.S. Code.

236) Through the pattern of racketeering

activity alleged herein, the defendants MINH, LUU and THACH, acquired or maintained, directly or indirectly, an interest in or control of the enterprise of the Mekong Center food store business of plaintiff and his wife, and its inventories and documents and it is an enterprise engaged in, or the activities of which affect, interstate or foreign commerce and the same is a violation of 18 U.S.C. 1962 (b).

237) The defendants MINH, LUU, THACH, VO, ARIF, SOLAND and the COWBOYS became a fledgling organized criminal enterprise in which they all were employed or with which all were associated, and which was engaged in, or the activities of which affected, interstate or foreign commerce in that it conducted or participated, directly or indirectly, in patterns of racketeering activity described herein in violation of 18 U.S.C. 1962 (c).

238) The defendants MINH, LUU, THACH, VO, ARIF, SOLAND and the COWBOYS conspired to violate the provisions of 18 U.S.C. 1962 (a), (b), or (c) through the acts alleged herein and others.

239) Throughout their dealings with the defendants MINH and LUU, the plaintiff and his wife learned of more and more acts of fraud using the mails or the telephone that the defendants MINH and LUU were involved in and that illustrated a pattern of racketeering activity. Some of have been described above. Many involved the defendant THACH as well. There were three instances of insurance fraud, where they would mail in fraudulent claims and collect on them. Two were claims for worthless, spoiled food, after arranging for fraudulent "water damage", following a pattern of fraud that they had begun back in South Vietnam. There was an instance when they attempted to collect for damage

to their house on River Street. At first their claim was refused. Then the defendant THACH showed them how to make fake damage to their house look more authentic. Defendants MINH and LUU then hired THACH to repair the damage and filed a fraudulent claim which they collected on and much of it was taken by the defendant THACH as his share of the fraud. These frauds also interfered with commerce.

240) In their operation of the Mekong Center the defendants MINH and LUU perpetrated a number of frauds. They did not inform the owners of the building that they were actually subleasing in violation of the master lease and kept the difference between the rent thus fraudulently collected by the device of the Vietnamese language "management contracts," and the moneys paid on the lease to the primary landlord, and as part of that fraud they collect from the

purchasers of the "management contracts," the actual store owners, sales tax, but they do not pay the full amount of the "sales tax" that they collect to the tax authorities. They only pay part, on information and belief, which they mail in, but they keep the rest while fraudulently claiming that they have paid it all.

241) In allegations above the operation by the defendants MINH and LUU of securities fraud has been described in connection with land in Fairfax county. They are now, and have been for some time engaged in a securities fraud of a similar nature in connection with their "big business" in Philadelphia, Pennsylvania, which they call the Mekong Asian International Center. They advertise in a Vietnamese language newspaper that circulates in Maryland for investors in their Asian International Center in

Philadelphia with no intention of honoring their promises to these investors or paying them back. One of their standard patterns that they have implemented a number of times is to take money as an investment from ethnic Vietnamese for these real estate development projects and then when the people ask for the return of their investment they tell the people that they have control of the authorities and will turn the investors in for "welfare fraud" if the investors try to get their money back. Because they have discovered that many Vietnamese refugees living on welfare have a secret horde of cash or securities.

Allegations Establishing Basis for Damages

_242) The wife of the plaintiff is of ethnic Chinese Vietnamese extraction, or what is sometimes called "Overseas Chinese." Her family in Vietnam was

engaged in the retailing business in food and other goods. Growing up she worked in the retail business, including retailing of food. Then she worked for over four (4) years at the last of her time in Vietnam in the Post Exchange (PX) of the United States military, gaining further experience in retailing working with U.S. currency. She has extensive knowledge of retailing.

243) The Mekong Center food store, in the years that it was managed by the defendants MINH and LUU from 1976 through 1982, before they let it go downhill so badly, had gross annual revenues in a number of years of almost two million dollars ($2,000,000.) and even better in a few years. Traditionally, Vietnamese stores stay open seven days a week and the Mekong Center food store, throughout its history has stayed open seven days a week. The daily gross volume of the Mekong

Center food store in the years that the defendants MINH and LUU were running it profitably, exceeded five thousand dollars ($5,000.) per day.

244) The history of the business shows that the target, which plaintiff adopted, of reaching a daily gross volume of three thousand dollars ($3,000.) per day in a period of one year was realistic. In the period from March 11, 1986, until May 27, 1986, when the plaintiff and his wife actually were able to run the business, a period of a little over two and one half months, they increased the daily gross volume of the business from one hundred dollars a day ($100.) or less to nine hundred dollars ($900.) a day. This was despite the fact that their ability to order goods was hampered by the abyssmal credit history and rating of the defendants MINH and LUU that was associated with the center in the minds of

many of the ethnic wholesalers as set out in the attached affidavit and that the lack of the promised lease made it impossible for them to draw on the greater lines of credit available to them in San Francisco and elsewhere, centers of supply for oriental ethnic foods, through plaintiff's wife's extended family.

245) Had the plaintiff and his wife not been interfered with and defrauded by the defendants MINH, LUU, THACH and VO, they would have averaged fifteen hundred dollars ($1,500.) per day for the first year of their operation of the food store business and for the other remaining five and one half years on the master lease (assuming exercise of the last five year option by the primary tenants since there was no economic incentive to do otherwise) would have averaged a minimum of three thousand dollars per day gross volume. This would translate into a first year's

annual volume of five hundred and forty-seven thousand and five hundred dollars ($547,500.) and in the years thereafter a gross volume of one million and ninety-five thousand dollars ($1,095,000.) per year.

246) Industry figures for ethnic specialty food retailing and the experience of this market in particular as well as other similar ones, shows that the gross profit on such a business at these volumes is thirty percent (30%).

247) The plaintiff, by the endorsed certified check on May 2, 1986, paid the defendants MINH and LUU fifteen thousand dollars of the purchase price and he is entitled to the return of that as a damage.

248) The plaintiff and his wife invested in excess of forty-nine thousand dollars ($49,000.) in the inventory of the Mekong Center food store during the time when

they had been defrauded into believing that they owned the business and did own it based on their partial performance of the purchase contract and before the business was defrauded and extorted from them. The greater part of this inventory remained in the store and was unsold when the business was taken from the plaintiff and his wife in the culminating act of fraud and extortion on May 28, 1987. The retail value of this inventory was approximately sixty-four thousand dollars. ($64,000.) After the business was taken from them the defendants MINH and LUU, whose credit was nonexistent with the necessary wholesalers and suppliers as aforesaid, without buying any more goods or inventory, sold everything they could of the inventory accumulated by plaintiff and his wife for the store and then sold the business again, with virtually no inventory, for forty-five thousand dollars

($45,000.) sometime in July of 1986 to a third parties named Mr. Hiep and Mrs. Thao.

249) Defendants MINH and LUU used the proceeds of a pattern of racketeering activity to operate and maintain the enterprise of the food store which engages in or affects interstate or foreign commerce.

250) The plaintiff and his wife during the period in which they were defrauded into the ownership of the business in order that it might be extorted from them paid the defendants MINH and LUU approximately six thousand dollars ($6,000.) in rent including paydowns to wholesalers of back debt accumulated by the defendants MINH and LUU for which they were to receive credit against rent under their agreement with MINH and LUU on which they performed in substantial part. In addition plaintiff and his wife spent over

one thousand dollars ($1,000.) on services to improve the store, including rodent and pest elimination, installation of alarms and the like. Plaintiff expended over one thousand dollars ($1,000.) in time and materials fixing up the store, including repairing all broken shelving and extensive painting. Plaintiff and his wife gave defendants MINH and LUU about two thousand and one hundred dollars ($2,100.) in "sales tax" proceeds for Arlington County at a figure of four percent of gross sales. Plaintiffs have it on information and belief that the defendant MINH did not report the full figure of this sales tax to Arlington County officials or pay the full amount to them paid to him by plaintiff and plaintiff's wife.

251) The defendants MINH and LUU have a widespread reputation in their community for acts of fraud and deception, which

frequently involve use of the telephone and often the mails. The defendants THACH and VO have a widespread reputation for acts of fraud and deception as well, also frequently using the telephone and/or the mails and also a widespread reputation for acts of violence or threats of violence. The defendant LUU has a widespread reputation in the community for acts of violence as well. The defendants COWBOYS have a very widespread reputation for violence.

252) The fraud and extortion practiced upon the plaintiff and his wife in the matter of the Mekong Center interfered with commerce.

253) When the plaintiff and his wife took over the Mekong Center food store business on March 11, 1986, it had a reputation and standing in the community and within the trade that was very bad, for attempting to sell spoiled food, for

overcharging customers, for cheating customers and for other unbusinesslike practices. MINH and LUU had given it such a bad reputation that few other merchants wanted to deal with it and few customers patronized it. It had a large reservoir of ill will. The plaintiff and his wife, in two and one half months, built up the business of the Mekong Center food store business to a creditable standing among merchants and a good reputation in the community.

254) The defendants MINH and LUU used the proceeds of their fraud and extortion practice upon the plaintiff and his wife to acquire or operate in whole or in part other businesses and operations including their real estate promotion in Philadelphia, known as The Mekong Asian International Center, the operation of the business of subleasing through "management contracts" in the Mekong Center on Wilson

Boulevard in Arlington County, Virginia through helping supply the rental payments on the prime lease, the fraudulent business of skimming sales tax proceeds in the Mekong Center, the operation of their various frauds and cons out of their house on River Street in Arlington, also sometimes used as their home, their business of speculating in real estate and other businesses and operations.

255) Defendants MINH and LUU and their associates defendants THACH and VO, in connection with this matter of the Mekong Center food store, told numerous lies and falsehoods about the plaintiff and his wife that were deliberate attempts to damage the business and business reputation of the plaintiff and his wife, such as, after the final lockout and extortion, that plaintiff and his wife had not paid the rent on the food store and that is why the defendants MINH and LUU

and THACH had to evict them.

WHEREFORE the plaintiff prays in this Count IV for the acts complained of jointly and severally from the defendants MINH, LUU, THACH, VO, ARIF, SOLAND and, anonymously, the COWBOYS, the following damages:

I. Direct damages in excess of twelve million dollars ($12,000,000.) for the value of the business expropriated over the remaining life of the leasehold under the master lease.

II. Damages for damage to business generally, business reputation, in the nature of slander and destruction of good will, in excess of another twelve million dollars ($12,000,000.)

III. Damages in pain and suffering, mental and emotional anguish and distress, in excess of ten million dollars ($10,000,000.)

IV. Total damages under RICO, 18 U.S.C.

1964, before trebling and attorney's fees, in excess of thirty-four million dollars ($34,000,000.), and

V. Trebled under the provisions of 18 U.S.C. 1964, total damages in excess of one hundred and two million dollars ($102,000,000.) plus

VI. Attorney's fees for the cost of pursuing this count in excess of two hundred thousand dollars ($200,000.) for

VII. Total money damages in excess of one hundred and two million and two hundred thousand dollars ($102,200,000.), and

Equitable and declaratory relief as follows:

VIII. Preliminary injunction freezing all the proceeds of the development of the Mekong Asian International Center business of the defendants MINH and LUU in Philadelphia, Pennsylvania, and all of its assets pending the outcome of this

litigation.

IX. Preliminary injunction placing the operation of the subleasing of the said Mekong Center under the management of a court appointed trustee pending the outcome of this litigation or escrowing the proceeds therefrom and a permanent injunction ordering the business of that subleasing run under trust for the benefit of the satisfaction of the award rendered to the plaintiffs in this case for the remainder of the leasehold held there by defendants MINH and LUU and a declaration that the contract between plaintiff and his wife and MINH and LUU for the purchase of the food center business was a valid contract on which plaintiff and his wife substantially partially performed or, in the alternative, for the ownership of that master lease by the plaintiff in partial satisfaction of damages.

X. Temporary and permanent injunctions

ordering the defendants MINH, LUU, THACH, VO, ARIF, SOLAND and THE COWBOYS to refrain from representing that there was justification for their locking the plaintiff and his wife out of the Mekong Center and taking their business from them, or that plaintiff and his wife did not pay the rent to MINH and LUU during the time that they ran the food store business or in any way disparaging the ability of the plaintiff and his wife in the way that they managed the food store business upon pain of being held in contempt of this Court.

XI. Temporary and permanent injunctions ordering these defendants named above not to go within one mile of the aforesaid Mekong Center pending the outcome of this litigation and to not in any way harass, threaten, attempt to influence or in any other way attempt to influence the other shopkeepers who operated businesses in the

Mekong Center as to their testimony in this case and, in the event of a verdict and judgment in favor of the plaintiffs, thereafter, and to not go near or harass in any way the plaintiff or his wife or children or mother-in-law.

XII. And such other legal or equitable relief as to the court shall seem just and proper.

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

88-765
NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

APPENDIX III (Supplemental) PART F

Laurence A. Elgin *
John D. HEMENWAY
4816 Rodman St., N.W.
Washington, D.C. 20016

*Counsel of Record

CONTENTS OF THIS VOLUME OF APPENDIX III

(Supplemental) APPENDIX III

PART F

THE ORIGINAL COMPLAINT WITH WHICH THE AFFIDAVIT WAS INCORPORATED in the United States District Court for the Eastern District of Virginia, Alexandria Division.

HOAI v. VO, et al., CA 87-0294

(This is the 4th part of 4parts) pp 335-398

COUNT V: RICO: MY LINH SOLAND: AGGRAVATION: AIDING AND ABETTING: ADDITIONAL WIRE FRAUD

__256) Plaintiff repeats herein and incorporates by reference paragraphs 1) through 255) above.

257) Between the meeting at the gas station on June 5, 1986, and June 20, the plaintiff talked several times with Ernie Peele, who revealed some of the slander and lies that had been told to him about the plaintiff by the defendants THACH, VO, MINH and LUU at the gas station on June 5, after plaintiff had been led by the defendant SOLAND into her car and left there and she, the defendant SOLAND, had returned to the station office at the time that the defendants MINH and LUU had just entered also, such as that plaintiff had stolen one hundred thousand dollars ($100,000.) from the sister of THACH and that the "Vietnamese community" hated the plaintiff and so forth.

258) Throughout this time and the ensuing time until plaintiff discovered the dual agency and fraud of the defendant SOLAND the defendant SOLAND did advise plaintiff not to talk to SUNOCO and SUNOCO personnel. Plaintiff did nonetheless continue to talk to the said personnel of the defendant SUNOCO..

259) During this time before on June 20, 1986, the plaintiff formulated a plan to take back over the gas station business which would require some but not very much support from Sunoco and suggested it to Ernie Peele and his boss Harry Vaughn in outline.

[Note: the misnumbering of the paragraphs at this point is in the original due to inexpertise in computer use at the time]

230) Plaintiff lined up the capital necessary for his plan, which was to go into the station with some Sunoco personnel and an inventory specialist,

whom Sunoco could obtain, and take an inventory of what stock VO had put in the station, ask to see evidence of what, if any, money VO had actually deposited in the station account from the checkbook or bank records, and then pay VO for the exact amount of his investment. It was crucial to this plan that at least one of the SUNOCO personnel go with the plaintiff and tell VO to leave in order to eliminate the pretense of legitimacy on VO's part pursuant to the fraudulently extorted one dollar ($1.) contract.

231) Harry Vaughan, Ernie Peele and other Sunoco personnel agreed with this plan and Sunoco agreed to do its part. On each occasion, however, that the plaintiff and Sunoco personnel were close to executing this plan, plaintiff was deflected from doing so, as were the Sunoco personnel by the defendant SOLAND, whom neither plaintiff nor the Sunoco

personnel realized at the time was in league with the other defendants. Plaintiff took defendant SOLAND's advice during this period and Sunoco personnel continued to counsel to accept his lawyers' advice.

232) On August 18th, at Fairfax Courthouse, plaintiff saw SOLAND and her partner Lutz representing defendants MINH and LUU in a case in which they had been representing them for some time.

233) Plaintiff discharged SOLAND that day.

234) Defendant MY LINH SOLAND continued this dual agency and conflict of interest from May 28, 1986, when she drafted a letter for plaintiff to be sent to MINH and LUU, until August 18.

235) Throughout this dual agency and conflict of interest the actions and words of defendant SOLAND aided, abetted and counselled the fraud and extortion of

defendants MINH, LUU, THACH and VO against the plaintiff and his wife and against the plaintiff's business of the gas station lease and franchise aforesaid and the business that plaintiff and his wife had at the Mekong Center food store so as to make her a principal in the pattern of racketeering activity complained of herein within the meaning of section 2, title 18 of the U.S. Code as referred to and incorporated by 18 U.S.C. 1962 (a).

236) Until the duality of her agency was discovered by plaintiff, defendant SOLAND aided and abetted and counselled the pattern of recketeering activity of the defendants MINH, LUU, VO, THACH and ARIF by counselling the plaintiff to stay at home and do nothing and give up all means of livelihood. Most of the advice of SOLAND to follow this course of action, or inaction, was given by defendant SOLAND to the plaintiff over the phone. This

aggravated the harms done by these other defendants in their pattern of racketeering activity as well as aided and abetted them, making plaintiff and his wife vulnerable to the wire fraud, robbery and extortion that was practised upon them and preventing them from taking effective steps to protect themselves and seek their remedies while the defendant SOLAND was counselling one or more of the defendants in their pattern of racketeering activity.

237) In giving this advice to plaintiff, defendant SOLAND fraudulently misrepresented to plaintiff that this was legal advice in his best interest, when it was not. Plaintiff relied upon these misrepresentations to his harm and detriment.

238) Between June 20, 1986, and July 14, 1986, defendant SOLAND twice interfered with specific oral contracts or agreements between the plaintiff and the Sunoco to

enter the gas station and work together to get the defendant VO out of the station and take an inventory and pay off the defendant VO for inventory he had purchased and cash he had actually put up.

239) On these occasions, and throughout her dual agency and conflict of interest, the defendant SOLAND falsely represented to plaintiff that at that time Sunoco was trying to harm him and would not help him. Ultimately the actions of this defendant were substantially responsible for Sunoco's decision to turn against the plaintiff and only back him temporarily when he did seek legal remedies.

240) Throughout these actions of the defendant SOLAND, from the initial oral hiring on, much of the business and false representations were conducted using the telephone.

241) As part of her fraud in preventing plaintiff from effectively working with

Sunoco to end the illegal occupation by the defendants VO and THACH of the gas station, the defendant SOLAND wrote, and mailed in the United States mail, on two occasions, letters to Sunoco which were designed to achieve delay by fraudulently purporting to be counsel's letters designed to help the plaintiff regain his gas station business when in fact they were designed to create delay and encumber the plaintiff in his attempts to regain his gas station business.

242) Plaintiff relied upon the fraudulent misrepresentation that these letters were designed to, and would help him, to regain his station quickly and would facilitate effective legal remedies for his problems and was harmed thereby.

243) Defendant SOLAND falsely and fraudulently deprived and robbed plaintiff of valuable legal services vital to him by her participation in, aiding and abetting

and counselling of, or conspiracy with other defendants to accomplish, a pattern of racketeering activity against the plaintiff which took his gas station lease and franchise from him by fraud and extortion and prevented him from curing that fraud and extortion by effective action at a time when such effective action and effective legal representation were essential.

244) In so doing SOLAND received income derived directly or indirectly from the pattern of racketeering activity engaged in by MINH and LUU and/or the other defendants, either individually or through her law partnership or association, and used or invested it, directly or indirectly in that it was used to aid, abet and counsel the other defendants, in acquiring an interest in, or the establishment or operation of, the businesses of the plaintiff which were

engaged in or affected interstate or foreign commerce all in violation of 18 U.S.C. 1962 (a).

245) Using the telephone, the defendant SOLAND defrauded plaintiff by fraudulently and deliberately leading him to believe that she had filed a lawsuit on his behalf to recover his business interest that he had built up with his wife in the food store when she had not filed such a suit and by representing that he did not need to file such a suit when he did.

246) Using the telephone, the defendant SOLAND defrauded plaintiff by fraudulently and deliberately leading him to believe that she had filed a lawsuit on his behalf to recover his business interest that he had built up in the gas station lease and franchise of plaintiff at 2305 Pennsylvania Avenue, S.E., in the District of Columbia when she had not filed such a suit and by representing that he did not

need to file such a suit when he did., and by falsely representing that she was working with other lawyers on the recovery of the extorted gas station business when she was not.

247) Even after plaintiff discovered the fraud perpetrated against him by the defendant SOLAND in claiming to file suits she had not in fact filed and in representing that suits should not have been filed when they should have been, the defendant SOLAND further defrauded plaintiff over the telephone by representing that the defendant LUU was judgment proof and otherwise trying to prevent plaintiff, as her client, from pursuing the proper remedies in his cause by fraudulent representations.

248) By aiding, abetting and counselling others of the defendants in this fashion, and being paid therefor, the defendant SOLAND herself, through a pattern of

racketeering activity, indirectly acquired or maintained an interest in, or control of the enterprises of the plaintiff which were engaged in or affected interstate or foreign commerce in violation of 18 U.S.C. 1962 (b).

249) Defendant SOLAND was thus employed by or associated with the fledgling criminal enterprise of the other defendants and participated in its affairs as it was engaged in or affected interstate or foreign commerce through a pattern of racketeering activity in violation of 18 U.S.C. 1961 (c).

250) Defendant SOLAND engaged in a conspiracy with the other defendants MINH, LUU, VO, THACH, and ARIF to defraud, by wire and mail, and to aid and abet and counsel the robbing and extorting from plaintiff of his gas station business, his food store business and inventory, his business documents and to interfere with

commerce by preventing him from taking the proper legal steps to remedy his situation, all to his harm and thus defrauded him of and robbed from him valuable legal services to which he was entitled. This conspiracy violated 18 U.S.C. 1962 (d).

251) Defendant SOLAND interfered with commerce by her fraudulent activity to the harm of plaintiff in that it destroyed and stopped the growth of his growing businesses and replaced his management with a pattern of racketeering activity.

WHEREFORE plaintiff prays on this Count V for damages against the defendant MY LINH SOLAND for aiding, abetting, counselling and participating in the pattern of racketeering activity practised against him by defendants MINH, LUU, VO, THACH, ARIF and THE COWBOYS, and for conspiring with these defendants also to carry out a pattern of racketeering

activity against the plaintiff and for aggravating the same, as follows:

I. With regard to the plaintiff's gas station business, the same money damages as prayed for in Count III. above.

II. With regard to the food store business, the same money damages as prayed for in Count IV. above, adding up to:

III. total damages for the fraud and extortion of both businesses or business interests, before trebling under the statutory provisions of 18 U.S.C. 1964, in excess of ninety-four million and one hundred thousand dollars ($94,100,000.), and

IV. total damages as trebled under the statutory provisions of 18 U.S.C. 1964, before adding an estimate for the attorney's fees provided for by the statute, in excess of two hundred and eighty-two million and three hundred thousand dollars ($282,300,000.), and

V. For estimated legal fees and costs of this proceeding, in excess of three hundred thousand dollars ($300,000.), for

VI. total money damages under this Count V against defendant MY LINH SOLAND in an amount in excess of two hundred and eighty-two million and six hundred thousand dollars ($282,600,000.) and equitable relief against defendant MY LINH SOLAND as follows:

VII. temporary and permanent injunctive relief barring defendant SOLAND from representing to anyone that she did anything of value or benefit as a lawyer for plaintiff or his wife, or that she represented plaintiff or his wife, except as may be necessary to her defense before the bar's grievance committee, upon penalty of being found in contempt of court, and

VIII. temporary and permanent injunctive relief against her aiding, abetting or

counselling as a lawyer any of the other defendants upon pain of being held in contempt of court, and

IX. temporary and permanent injunctive relief against defendant SOLAND's representing to any court, forum, administrative body, or other tribunal that she is a member of the bar in good standing in the Commonwealth of Virginia, and

X. such other legal and equitable relief as to the Court shall seem just and proper.

COUNT VI: RICO: MICHAEL ARIF: AGGRAVATION: AIDING AND ABETTING, COUNSELLING, PARTICIPATING IN FRAUD, ROBBERY AND EXTORTION, INTERFERENCE WITH COMMERCE: ADDITIONAL WIRE FRAUD

252) Plaintiff repeats herein and incorporates by reference paragraphs 1) through 251) above.

253) By his use of the telephone and the mails the defendant MICHAEL ARIF participated in the fraud, robbery and

extortion of the gas station franchise and dealership and of the Mekong Center food store, its inventory and business papers from plaintiff as set out above as part of the pattern of racketeering activity complained of and also in the interference with commerce.

254) The defendant ARIF aided and abetted and/or counselled the same.

255) The defendant ARIF participated in the fraud of the defendant THACH throughout these events, participating in a pattern of using the telephones of his law offices, the mails and his letterhead as a lawyer to hold out that THACH was variously a banker, the president of a bank and/or the owner of a bank when, as he well knew, or within the exercise of reasonable prudence should have known that the defendant THACH was nothing of the kind.

256) Plaintiff acted upon this

fraudulent misrepresentation to plaintiff's detriment.

257) By this fraud of holding out THACH as a banker to whom the plaintiff could look for promised loans and other financial support, the defendant ARIF received income directly or indirectly from a pattern of racketeering activity as alleged herein in which he has participated as a principal within the meaning of section 2, title 18, U.S. Code, and has used or invested, directly or indirectly, a part of such income, in acquisition of an interest, or the establishment or operation of, an enterprise which engages in, or affects interstate or foreign commerce in that this defendant derives and has derived substantial legal fees from other defendants herein as in interest in their illicit takeover of the businesses of the plaintiff. This was done in violation of

18 U.S.C. 1962 (a).

258) Using the telephone, the defendant ARIF arranged in his law offices on July 14, 1986, a meeting for plaintiff and defendant SOLAND and defendant VO. Fraudulently it was misrepresented that the meeting would be for purposes of the plaintiff's buying out defendant VO's inventory and actual investment (it being by then apparent that the claimed thirty-five thousand dollar ($35,000) loan, the claimed forty-five thousand dollar ($45,000.) deposit and the claimed one hundred thousand dollar ($100,000.) deposit were all a fraud and a deceit) as plaintiff had been trying to arrange directly with Sunoco. On purpose, however, Sunoco was excluded from the meeting and the "banker" THACH was included by the deceit of the defendant ARIF as an attendee.

259) The misrepresentation as to the

nature of this meeting was designed to induce plaintiff to rely upon it to his harm and detriment, which he did. Defendants VO and ARIF had no intention of seriously or realistically discussing plaintiff's proposal for plaintiff to pay VO for his actual purchases in the gas station that were in inventory and for any moneys actually put up in the bank account, as opposed to the station's own proceeds which VO had deposited in the account. Rather their purpose was to get plaintiff at a meeting without Sunoco so that, with the presence of THACH, the fact of whose appearance at the meeting they deliberately withheld from plaintiff, they could further threaten plaintiff in pursuance of their pattern of racketeering activity involving fraud, robbery and extortion.

260) At this meeting the defendant THACH and defendant VO, in front of defendant

ARIF and defendant SOLAND, offered twenty-five thousand dollars ($25,000.) to plaintiff for his gas station lease and franchise. Plaintiff refused and said he did not want to be bought off, he wanted his gas station back, whereupon the defendants VO and THACH, in front of SOLAND and ARIF, threatened to kill the plaintiff again in the Vietnamese language which threats the defendant SOLAND immediately translated into English and repeated to defendant ARIF. ARIF made no effort to disassociate himself from this behavior and by his words and actions aided, abetted and counselled the defendants VO and THACH in this behavior. Later he lied about it.

261) Subsequently, on August 25, 1986, plaintiff did execute his plan of going to the gas station, demanding that VO and THACH give it back to him and commencing an inventory with the intent of paying VO

for any unsold inventory that VO had actually purchased for the station and for money actually loaned. As it happened VO was not there on that day and his employees left the station relatively peacefully and there was no violence or threat of violence. By coincidence an off duty policemen was in the station when plaintiff and his new attorney (replacing defendant SOLAND) arrived and other police were subsequently summoned, so that one or more police officers were there the entire time that the confrontation between plaintiff, his attorney and his attorney's son and the employees of VO and THACH took place.

262) Defendant THACH arrived at the scene later on that same day, having been summoned by phone, and in his presence the defendant ARIF entered into a binding oral contract on behalf of his clients THACH and VO, the latter having conferred with

the personnel in the station by telephone, to abide by the word of the Sunoco representative, Ernie Peele, who was to arrive the following day, as to who should by the proper, legitimate Sunoco lessee and franchisee in possession of the station, defendant VO or the plaintiff. Subsequently defendant ARIF affirmed this agreement to Ernie Peele and again in a sworn statement. The oral agreement was to abide by the decision of Ernie Peele and to let plaintiff, should Ernie Peele decree that plaintiff was the proper lessee and franchisee of the station, execute his plan of again running the station and reimbursing VO for inventory and moneys actually provided out of VO's own funds as opposed to those of the station itself.

263) The entrance into this agreement by the defendant ARIF into this agreement was a further fraud, designed to induce

plaintiff to rely upon it to his harm. Neither ARIF, VO nor THACH had any present intention of actually abiding by the agreement but only intended to make plaintiff rely upon it and cease further efforts to establish his legal right to the station and its business while they simultaneously prepared an actual physical assault upon the station and any persons there on behalf of plaintiff for the following morning as part of the ongoing fraud, robbery and extortion of the station and its assets and while they prepared a complaint falsely accusing the plaintiff of having taken the station from them by violence, which they did within a few days.

264) Though the violent assault the next morning was terminated by the arrival of more police officers, the fraudulently prepared sham complaint, which was filed within a few days, led to a Temporary

Restraining Order, based upon further frauds and lies, which was successful in getting plaintiff ordered out of the station by a judge of the Superior Court of the District of Columbia on the sole grounds that plailniff had improperly and violently entered and taken possession of the station.

265) This order expired by its own terms and no extension of it was ever sought. The main case is still pending in the Superior Court as is an appeal of the holding of the judge in granting the TRO in the first place.

266) Thus, this sham pleading, the TRO motion, and the use of the phone and the mails in connection with it were a further fraud, evidence of the fraud involved in agreeing to abide by the decision of Ernie Peele and a further interference with commerce in that by a combination of extortion involving threats of, and

attempts at violent assault with using improperly the color of official right, the defendant ARIF, in concert with other attorneys in the District of Columbia and VO and THACH did take back the station again to prevent the experienced, competent management of the plaintiff that was increasing the station's participation in commerce with operation of the station as an enterprise by a pattern of racketeering activity and operation that was, moreover, inefficient and replete with illegal and improper activities that constituted an interference with rather than an enhancement of commerce.

267) Subsequently, using the phone and mails the defendant ARIF engaged in other fraudulent and sham motions and filings by counselling, aiding and abetting the pattern of racketeering activity engaged in by the defendants THACH and VO, including pretending to consent to a

deposition with no present intention of cooperating or doing other than he did do, namely, lie, attempt to prevent plaintiff's counsel from conducting a meaningful deposition, and disrupting proceedings with phony, staged objections and attacks on plaintiff's counsel.

268) In doing all of these things the defendant ARIF failed to report his clients' fraud to those who were or might be injured by it as required by Virginia Disciplinary Rules DR 1-102(A)(3) & (4); DR 2-108(A)(1); DR 2-108(B)(2); DR 4-101(C)(3); DR 4-101(D)(1) and instead participated in the fraud and extortion of VO and THACH, lending an air of legitimacy to their empty promises and their threats and extortion.

269) Thus by his counselling, aiding and abetting this pattern of racketeering activity by the defendants VO, THACH, MINH and LUU, complained of, the defendant ARIF

stepped over the line and became a participant therein, acquiring or maintaining, directly or indirectly, an interest in the control of the enterprise of plaintiff's gas station business by his clients THACH and VO, the station being an enterprise which is engaged in, or affects interstate or foreign commerce, all in violation of 18 U.S.C. 1962 (b).

270) Arif, in these actions, was employed by or associated with the fledgling organized crime entity consisting of these defendants and conducted or participated in, directly or indirectly, the conduct of its affairs through a pattern of racketeering activity as set out herein.

271) Defendant ARIF conspired with the other defendants to carry out, aid and/or abet and/or counsel their pattern of racketering activity in which they engaged as set out herein in violation of 18

U.S.C. 1962 (d).

WHEREFORE plaintiff prays on this Count VI for damages against the defendant ARIF for aiding, abetting, counselling, and/or participating in the pattern of racketeering activity practised against plaintiff by the other defendants and for conspiring with these defendants also to carry out the aforesaid pattern of racketeering activity against the plaintiff and for aggravating the same, as follows:

I. With regard to the plaintiff's gas station business, the same money damgages as prayed for in Count III. above.

II. With regard to the food store business, the same money damages as prayed for in Count IV. above, adding up to:

III. total damages for the fraud and extortion of both businesses or business interests, before trebling under the statutory provisions of 18 U.S.C. 1964, in

excess of ninety-four million and one hundred thousand dollars ($94,100,000.), and

IV. total damages as trebled under the statutory provisions of 18 U.S.C. 1964, before adding an estimate for the attorney's fees provided for by the statute, in excess of two hundred and eighty-two million and three hundred thousand dollars ($282,300,000.), and

V. in addition to all of the above, for estimated legal fees and costs of this proceeding, in excess of three hundred thousand dollars ($300,000.), for

VI. total money damages under this Count VII against defendant ARIF in an amount in excess of two hundred and eighty-two million and six hundred thousand dollars ($282,600,000.) and, in addition thereto, equitable relief against this defendant ARIF as follows:

VII. temporary and permanent injunctive

relief against the defendant ARIF from representing to anyone that defendant THACH is or ever was a "banker," upon penalty of being found in contempt of court, and

VIII. temporary and permanent injunctive relief against defendant ARIF's aiding, abetting or counselling as a lawyer any of the other defendants herein upon pain of being held in contempt of court, and

IX. temporary and permanent injunctive relief against defendant ARIF's representing to any court, forum, administrative body, or other tribunal that he is a member of the bar in good standing in the Commonwealth of Virginia, and

X. such other legal and equitable relief as to the Court shall seem just and proper.

COUNT VII: RICO: DEFENDANT SUNTECH SUNOCO, INC.: AGGRAVATION: AIDING AND ABETTING, PARTICIPATING IN FRAUD, ROBBERY, EXTORTION: WIRE AND MAIL FRAUD: INTERFERENCE WITH COMMERCE

272) Plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 271) above.

273) Defendant SUNTECH SUNOCO, INC., acting through its officers and directors, participated in the above pattern of racketeering activity and also aided and abetted the same.

274) Defendant SUNTECH SUNOCO, INC. received income derived, directly or indirectly, from the pattern of racketeering activity described herein in the form of the proceeds of the gas station business defrauded, robbed and extorted from plaintiff and used or invested, directly or indirectly, a part of that income, or its proceeds in the acquisition of the gas station business, its operation or its establishment, the

gas station business being an enterprise which engages in, or affects interstate commerce, all in violation of 18 U.S.C. 1962 (a).

275) Defendant SUNTECH SUNOCO, INC., through a pattern of racketeering activity involving wire and mail fraud by it or its principals, interference with commerce, and robbery and extortion, acquired or maintained, directly or indirectly, an interest in, or control of the gas station enterprise, being an enterprise which engages in, or affects, interstate or foreign commerce in violation of 18 U.S.C. 1962 (b).

276) Defendant SUNTECH SUNOCO, INC. was employed by and associated with the fledgling organized crime entity of the other defendants which entity engaged in or affected interstate or foreign commerce and was conducting or participating of the affairs of that fledgling enterprise

through a pattern of racketeering activity as set out herein.

277) Defendant SUNTECH SUNOCO, INC., by wire and mail fraud, robbery and extortion, stole the trade name coined by plaintiff for his gas station and robbed the licenses of the plaintiff for his gas station business, including all permits, licenses, insurance, etc. In so doing this defendant interfered with commerce.

278) Through its officers and directors defendant SUNTECH SUNOCO, INC. conspired with some or all of the other defendants in violation of 18 U.S.C. 1962 (d) to violate 18 U.S.C. 1962 (a), (b) or (c).

WHEREFORE plaintiff prays in this Count VII. for damages against the Defendant SUNTECH SUNOCO, INC. as follows:

I. The same money damages prayed for in Count III above, and

the following equitable and declaratory relief:

II. temporary and permanent injunctions placing the defendant SUNTECH SUNOCO, INC. under the sole control of the plaintiff and his designees, freezing, pending the outcome of this litigation, all it banking accounts and other liquid assets and escrowing them, forbidding any transfer of shares or equity in the corporation pending the outcome of the litigation and forbidding the same, except through plaintiff, thereafter, commanding all the other defendants to stay out of the corporation henceforth and barring them from being officers or directors and enjoining the corporation from hilding out any more that it is the lessee and franchisee of the gas station business in question except through plaintiff and ordering the present officers and directors to communicate to all regulatory bodies and authorities to whome the corporation has applied, or from whom it

has received, any kind of license or permit whatsoever, including the Metropolitan Police in any of its branches or offices, as they resign, that the plaintiff is the true owner of the station business in question and that any representations to the contrary were false and not made in good faith and to vacate their positions in the corporation immediately thereafter upon penalty of being held in contempt if they do not comply.

III. Such other and further legal and equitable relief as to this Court shall seem just and proper.

COUNT VIII: RICO: DEFENDANTS COWBOYS: AGGRAVATION: AIDING AND ABETTING, COUNSELLING, PARTICIPATING IN FRAUD AND EXTORTION: INTERFERENCE WITH COMMERCE

279) Plaintiff repeats herein and incorporates by reference paragraphs 1) through 278) above.

280) By their behavior as, and knowingly allowing themselves to be used as, "street

muscle," or the threat of the same, to enable the other defendants to carry out their fraud, robbery and extortion, the defendants COWBOYS participated in the above described fraud, extortion and interference with commerce as set out above, including their appearance at breakfast at the Mekong Center in early May, their appearance at the gas station when plaintiff was being physically intimidated and intimidated with threats not to come to his own gas station, their appearance at the Mekong Center on the morning of May 28, 1986, their threatening plaintiff on the sidewalk by the Saigon Market when he was with his small child, and so on.

281) One man in particular told another member of the local Vietnamese community that because of plaintiff's alleged lying to and wrongs to defendants VO and THACH the "banker," he was going to burn

plaintiff's house. This was Hai Den.

282) The defendants COWBOYS received income, directly or indirectly, from a pattern of racketeering activity as set out herein in which they participated as principals within the meaning of section 2, title 18, U.S.Code, and used such income, or the proceeds of such income, directly or indirectly, in the acquisition, establishment or operation of an enterprise which directly or indirectly engages in or affects interstate or foreign commerce, namely the fledgling criminal enterprise described herein and the gas station business, all in violation of 18 U.S.C. 1962 (a).

283) The defendants COWBOYS acquired or maintained, directly or indirectly, an interest in an enterprise engaged in or affecting interstate or foreign commerce in their hanging around the gas station business and in their looking to it and to

the fledgling criminal entity of these defendants for employment.

284) The defendants COWBOYS were employed by or associated with the fledgling organized criminal entity of the defendants and in that capacity conducted or participated in a pattern of racketeering activity, including wire and mail fraud, robbery, extortion and interference with commerce.

WHEREFORE plaintiff prays in this Count VIII for damages against the defendants COWBOYS jointly and severally for aiding and abetting and participating in the pattern of racketeering activity practised against plaintiff by the other defendants as follows:

I. for money damages the same as those prayed for under Count V. above and, in addition thereto, equitable relief against the defendant COWBOYS as follows:

II. temporary and permanent injunctive

relief prohibiting the defendant COWBOYS from coming within one quarter mile of the Mekong Center or within one quarter mile of the gas station business at 2305 Pennsylvania Avenue, S.E., Washington, D.C. or from threatening or menacing directly or indirectly, by implication or reference or otherwise, any party hereto, any witness, any of the plaintiff's family, friends, counsel or other associates upon penalty of being held in contempt of this Court.

III. such other legal and equitable relief as to the Court shall seem just and proper.

COUNT IX: RICO: ALL DEFENDANTS: CONSPIRACY

285) Plaintiff repeats herein and incorporates by reference paragraphs 1) through 284) above.

286) All of these defendants named herein did conspire each with the other in

varying combinations to perpetrate the pattern of racketeering activity set out herein in violation of 18 U.S.C. (d) to the damage and harm of the plaintiff as set out above.

WHEREFORE plaintiff prays in this Count IX for damages against the defendants and all of them, jointly and severally, for conspiring to violate the provisions of 18 U.S.C. 1962 (a), (b), or (c) to carry out the aforesaid pattern of racketeering activity against the plaintiff and for aggravating the same, as follows:

I. The same money damages as prayed for in Count V above against all defendants jointly and severally.

COUNT X: RICO: EXTORTIONATE CREDIT TRANSACTIONS

287) Plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 286) above.

288) The fraudulent offer of defendant

VO, as counselled by defendant THACH, to loan thirty-five thousand dollars to plaintiff as part of the start of capital for the gas station lease and franchise was an extortionate credit transaction under 18 U.S.C. 891 et seq., and was conspired in by the defendants and they also collected on it extortionately by taking the entire gas station as a payment for it.

289) The "loan" of the fifteen thousand dollar certified check given to plaintiff by VO which he was then defrauded and extorted into immediately handing over to MINH was an extortionate credit transaction in that it was given for a thirty thousand dollar note.

290) These extortionate credit transactions, and the collection of the one, were predicate acts under 18 U.S.C. 1961 et seq.

COUNT XI: CIVIL RIGHTS: DEPRIVATION OF RIGHTS, PRIVILEGES AND IMMUNITIES: 42

PUBLISHER'S NOTE

THE FOLLOWING PAGE IS UNAVAILABLE FOR FILMING

377

his behalf when she was not.

294) Defendants VO and THACH and ARIF deprived plaintiff in this way also by conspiring to file and filing false pleadings full of false allegations and by using fraud to deprive plaintiff of the assistance of his counsel.

295) The defendants conspired together for the purpose of impeding, hindering, obstructing or defeating the due course of justice in Virginia and the District of Columbia, with the intent to deny to plaintiff the equal protection of the laws and injured him and his property in retaliation for his seeking to lawfully enforce his right to such equal protection, all in violation of 18 U.S.C. 1985 (2).

296) The defendants conspired together for the purpose of depriving plaintiff directly or indirectly of the equal protection of the laws and sought to

prevent or hinder the constituted authorities of Virginia and the District of Columbia from giving or securing to plaintiff the equal protection of the laws all in violation of 42 U.S.C. 1985 (3).

WHEREFORE plaintiff prays for money damages against all these defendants in the amounts set out above in the prayer under Count V plus the same amount in attorneys' fees under 42 U.S.C. 1988.

COUNT XII: FEDERAL SECURITIES FRAUD

297) Plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 296) above.

298) Plaintiff alleges that in connection with the fraud and extortion of his gas station business teh defendants committed fraud in the sale by him of securities in the form of the fraud accompanying the extortion that forced him to sign the "one dollar contract" described above and

299) that in connection with the sale to him and his wife of the Mekong Center food store business the defendants committed fraud in the sale of securities in the form of the lease and promised documents of ownership, and

300) that both cases the defendants said to him things that were not true and omitted to state material facts necessary to make the statements that were made not misleading in light of the circumstances in which they were made not misleading all in violation of section 10 of the Securities and Exchange Act of 1934 (15 U.S.C. 78j), and Rule 10-b 5 promulgated thereunder.

WHEREFORE plaintiff prays for money damages against all the defendants making such statements or omitting to make such material statements, all defendants, i.e., except SUNTECH SUNOCO, INC., and the COWBOYS, in an amount equal to that prayed

for in Count XI above.

PENDANT COUNTS

COUNT XIII: TITLE 18, SECTIONS 499 AND 500 OF THE CODE OF VIRGINIA, 1950, AS AMENDED: CONSPIRACY TO DAMAGE PLAINTIFF'S BUSINESS AND BUSINESS REPUTATION

301) Plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 300) above.

302) These actions of all of these defendants constitute two or more individuals willfully and maliciously conspiring or concerting together to damage the business and reputation of the plaintiff or encouraging others to do so, all in violation of Sec. 18-499 of the Virginia Code as amended entitling plaintiff, under the provisions of Sec. 18-500, to the same damages set out above under RICO for both businesses.

WHEREFORE plaintiff prays in this Count XIII for damages against the defendants and all of them, jointly and severally, for conspiring and concerting together

maliciously and willfully to damage the business and business reputation of plaintiff and for maliciously and willfully urging others to do the same, for the same money damages and equitable relief as prayed for in Count III above with regard to the gas station business and in Count IV with regard to the food store business.

COUNT XIV: INTERFERENCE WITH CONTRACT

303) Plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 302) above.

304) The defendants, and all of them, did thus interfere maliciously and willfully with the contract of lease and the contract of franchise between plaintiff and Sunoco and all of the defendants did interfere with the contract between plaintiff and plaintiff's wife, on the one hand, and the defendants MINH and LUU on the other hand, for the sale of the

Mekong Center food store business.

WHEREFORE plaintiff prays in this Count XIV as incorporated therein by reference, for money damages against the defendants and all of them, jointly and severally, in the ways and amounts set out in the above counts for damage to the plaintiff in connection with the loss of the the gas station lease and franchise and against all the defendants, jointly and severally, in the ways and amounts set out in the above counts in connection with the Mekong Center food store.

COUNT XV: BREACH OF CONTRACT: FOOD STORE

305) Plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 304) above.

306) By not providing the lease promised and locking plaintiff and his wife out after demanding materially altered terms and by robbing the inventory purchased by plaintiff and his wife, MINH and LUU

breached their contract with plaintiff and his wife.

307) Plaintiff and his wife, taking over the operation of the store upon the invitation of MINH and LUU and stocking it with inventory, substantially performed under the contract and the contract was binding.

WHEREFORE plaintiff prays for a declaratory judgment that the contract was binding and that they substantially performed and the defendants MINH and LUU breached the contract.

COUNT XVI: BREACH OF CONTRACT: GAS STATION SETTLEMENT

308) Plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 307) above.

309) The oral agreement between defendant ARIF, with THACH present and VO having conferred by telephone at the gas station on August 25, 1986, to let Sunoco

area representative Ernie Peele decide who was the proper and legitimate lessee and franchisee of the gas station was a binding contract.

310) Defendants THACH, VO and ARIF breached this contract by the violent physical assault the following morning and by the filing of their "pre-emptive strike" suit in the Superior Court a few days later.

WHEREFORE plaintiff prays for a declaratory judgment declaring that this oral agreement to settle matters was breached by the violent assault the following day and by the filing of a suit based on falsehoods.

COUNT XVII: ILLEGALITY AND INVALIDITY OF "ONE DOLLAR CONTRACT"

311) Plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 310) above.

312) The "one dollar contract" for the sale of the documents of the plaintiff's

gas station business was forced upon plaintiff by the defendants VO, THACH, ARIF, MINH, the COWBOYS and LUU by duress, fraud and extortion.

313) The contracts of franchise and lease between plaintiff and Sunoco for the gas station business and lease specifically forbade plaintiff to sell any ownership interest in the station business or site without the consent in writing of Sunoco.

314) No such consent was ever given to any sale of any interest to VO or any other defendant.

315) The "one dollar" consideration was an unconscionable bargain.

316) The "one dollar" consideration recited in the "one dollar contract" was never given to plaintiff.

317) While protesting its validity plaintiff has nonetheless formally rescinded the "one dollar contract" if it

should be valid for lack of consideration.

318) As a factual matter the "one dollar contract" provides in its terms for the sale of documents evidencing leasehold, franchise and other things. But the documents are not the things which they evidence, they are only the written evidence of the underlying agreement, permit or whatever other agreement or authority it is that they are evidence of.

319) To buy such documents is not to buy the relationships which they evidence.

320) In granting the TRO which expired by its own terms no ruling was made on this contract.

WHEREFORE plaintiff prays that it be declared as a matter of Virginia law of contracts that the "one dollar contract" is null and void.

COUNT XVIII: BREACH OF TRUST AND MALPRACTICE: SOLAND

321) Plaintiff repeats and incorporates

herein by reference the allegations of paragraphs 1) through 320) above.

322) The defendant MY LINH SOLAND breached her trust of counsel to client by her dual agency and failure to carry out her representation of the plaintiff and his wife as she stated she was doing and also committed willful negligence in the nature of fraud and malpractice.

WHEREFORE plaintiff prays in this Count XVIII for money damages against the defendant MY LINH SOLAND in the amounts set out in the above counts for damage to both of the businesses of the plaintiff.

COUNT XIX: MALICIOUS PROSECUTION

323) Plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 322) above.

324) The defendants VO, THACH, and ARIF, knowing the charges and allegations to be spurious and false, nonetheless, did bring suit in the Superior Court of the District

of Columbia as aforesaid, thereby causing plaintiff the loss of his gas station business, lease and franchise.

325) The same constitutes special damages over and above those necessary merely to defend a lawsuit.

WHEREFORE plaintiff prays in this Count XIX for all the money damages in the amounts set out above in the prayers of Count III for money damages.

COUNT XX: MALICIOUS BREACH OF CONTRACT: MINH AND LUU

326) Plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 325) above.

327) Defendants MINH and LUU maliciously breached their contract with plaintiff and plaintiff's wife for the sale of the food store business resulting in harm and detriment to the plaintiff including deliberately depriving him of income with which to fight the actions of these

defendants in taking and keeping his gas station business and resisting their sham pleadings.

WHEREFORE plaintiff prays in this Count XX for money damages as set out in the prayers for money damages in Count V above only with two-fold punitive damages in lieu of treble damages so that the amount is the same.

COUNT XXI: CONSPIRACY TO DAMAGE BUSINESS AND BUSINESS REPUTATION

328) Plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 327) above.

329) to the extent that any of the acts, omissions and ohter matters alleged herein constitute a conspiracy to damage the business or business reputation of the plaintiff that is outside the jurisdiction and reach of Virginia Code 18-499 and 18-500 because the same took place in the District of Columbia, plaintiff makes the same allegations as made under the

Virginia statutes only he makes them under the case law on the same subject in the District of Columbia.

WHEREFORE plaintiff prays for the same money damages for each business so covered as prayed for in Counts III. and IV. above with twofold punitive damages added in lieu of trebling under RICO.

COUNT XXII: COMMON LAW FRAUD

330) Plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 329) above.

331) The defendants in all of the fraudulent acts alleged herein, whether wire or mail fraud or not, committed common law fraud against the plaintiff as set out in each instance.

WHEREFORE plaintiff prays in this Count XXII for the same money damages prayed for in Count V above with twofold punitive damages in lieu of trebling under RICO.

COUNT XXIII: MALICIOUS BREACH OF CONTRACT TO LET ERNIE PEELE SETTLE IT

332) Plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 331) above.

333) When, on August 25, 1986, defendant ARIF agreed, in the presence of defendant THACH to let Ernie Peele, the Sunoco representative, settle the dispute over who was the rightful possessor of the gas station lease and franchise the next day and then the next day the defendant VO and others viciously attacked the station trying to assault the employees of plaintiff who were in it and then a few days after that VO sued plaintiff in the Superior Court with the backing of THACH and ARIF based upon lies, false representations and sham pleadings, the same were malicious breaches of that contract of settlement which cost plaintiff the possession of his gas station business, lease and franchise.

WHEREFORE plaintiff prays in this Count

XXIV for money damages against VO, THACH and ARIF in the amounts set out in Count III. above with twofold punitive damages in lieu of treble damages under the RICO statute.

COUNT XXIV: SLANDER: FIGHTING WORDS

__334) Plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 333) above.

_335) The various defendants did at various times as set out above and in the attached affidavit slander the plaintiff, for example:

A. The defendant VO told many people the lie that plaintiff was a liar and a cheat who had sold him his business and then tried to lie about it.

B. VO told the outrageous lie that plaintiff had slept with his wife.

C. THACH told the outrageous lie that plaintiff had stolen one hundred thousand dollars from the sister of THACH.

D. ARIF in the courtroom of the Superior Court, disparaged the business ability of the plaintiff.

E. SOLAND disparaged the business ability and standing in the community of the plaintiff.

F. The defendants MINH and LUU slandered plaintiff by falsely stating that plaintiff was hated and disliked in the Vietnamese community and slandered plaintiff and his wife by telling many people the lie that plaintiff and his wife were delinquent in paying their rent for the Mekong Center food store and that they had been kicked out of the the Mekong Center for that reason.

G. During the Temporary Restraining Order proceeding in the Superior Court of the District of Columbia the defendant VO published allegations of the plaintiff being a liar and an incompetent businessman to, and through, his attorneys

that were slanderous.

H. The defendants COWBOYS told numerous people that the plaintiff was a liar and a cheat, that he was a man with no business ability and also many other lies, all slanders.

336) The same also constituted violations of the Virginia "Fighting Words Statute," Section 8.01-45 of the Code of Virginia (1950 as amended).

337) All these slanders and lies about the plaintiff in their common acceptation are construed as insults and tend to violence and to breach of the peace and/or are disparagements of the plaintiff's professional abilities and business abilities.

WHEREFORE plaintiff prays in this Count XXIV for damages against the defendants jointly and severally, in addition to the damages claimed above, in the amount of ten million dollars ($10,000,000.).

GENERAL PRAYER

__WHEREFORE, on all these counts as aforesaid, plaintiff prays for the relief stated therein against the defendants named therein by name, or against all, jointly and severally, as the case may be, totalling money damages in excess of two hundred and eighty-two million and eight hundred thousand dollars ($282,000,000.) plus slander damages under Count XXIV above of an additional ten million dollars ($10,000,000.) and for the equitable and declaratory relief set out under the individual counts above, which are herein repeated and incorporated herein by reference.

In addition, plaintiffs pray for costs of suit, attorney's fees on counts where not statutorily provided for and prayed for, and for any other suitable equitable, declaratory or legal relief which to the Court shall seem just and proper.

THANH VONG HOAI

by

W. Steven Paleos,
Esquire

431 N. Lee Street
Alexandria, VA
22314
(703) 941 0387

Of Counsel:
Laurence A. Elgin
2762 Woodley Place, N.W.
Washington, D.C. 20008

VERIFICATION

Commonwealth of Virginia)
City of Alexandria) SS.

THANH VONG HOAI, being first duly sworn, deposes and says that he is the plaintiff named herein, that he has read and gone over the complaint and that though he is not a native speaker of English, he has asked concerning those words in English herein with which he is not completely familiar and that they accurately reflect, as far as he can ascertain, the truth of the allegations as if he had made them in his native language of Vietnamese allowing for the difficulties of translating between such different languages, and that the statement herein are true and correct, except as to matters he has on information and belief and that when they concern conversations had in the Vietnamese language they are true and accurate translations of what was said or words to that effect.

_____
Laurence A. Elgin

Subscribed and sworn before me this _____ day of March, 1987.

_____
NOTARY PUBLIC

My commission expires:

(15)

88-765
NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

APPENDIX II I (Supplemental) PART G

Laurence A. Elgin *
John D. HEMENWAY
4816 Rodman St., N.W.
Washington, D.C. 20016

*Counsel of Record

CONTENTS OF THIS VOLUME OF APPENDIX III

(Supplemental) APPENDIX III

PART G

THE FINAL COMPLAINT AS CHOPPED DOWN PURSUANT TO THE DIRECTIVE OF THE COURT, in the United States District Court for the Eastern Distric- of Virginia, Alexandria Division

HOAI v. VO, et al., CA 87-0294-A pp 399-465

III. THE FINAL COMPLAINT AS CHOPPED DOWN PURSUANT TO THE DIRECTIVE OF THE COURT

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

THANH VONG HOAI, 927 N. Highland Street. Arlington, Virginia,
Plaintiff,

v.

) Civil Action No.87-0294-A

THANH VAN VO, 2242 Senseney Lane, Falls Church, Virginia, 22043,

THACH DUY NGUYEN, 6123 Greeley Boulevard, Springfield, Virginia 22152,

NGUYEN VAN MINH, 4102 N. River St., Arlington, Virginia 22207

NGUYEN THI BACH LUU, 4102 N. River St., Arlington, Virginia 22207

JOHN DO, address and real name presently unknown, a/k/a as one of the "Cowboys," a gang of Vietnamese "toughs" who prey upon the Vietnamese community in Arlington, Virginia,

RICHARD RO, address and real name presently unknown, a/k/a as one of the "Cowboys," a gang of Vietnamese "toughs" who prey upon the Vietnamese community in Arlington, Virginia,

NGUYEN TU LO, address and real name presently unknown, a/k/a as one of the "Cowboys," a gang of Vietnamese "toughs" who prey upon the Vietnamese community in Arlington, Virginia,

CARL KO, address and real name presently unknown, a/k/a as one of the "Cowboys," a gang of Vietnamese "toughs" who prey upon the Vietnamese community in Arlington, Virginia,

MY-LINH D. SOLAND, 5460 Fillmore Avenue, Alexandria, Virginia 22311,

MICHAEL S. ARIF, 2300 24th Road South Arlington, Virginia

SUNTECH SUNOCO, INC., 2305 Pennsylvania Avenue, S.E. Washington, D.C. 20020,

Defendants.

AMENDED COMPLAINT FOR VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT, VIOLATIONS OF THE SECURITIES AND EXCHANGE ACT OF 1934, VIOLATIONS OF THE CIVIL RIGHTS LAWS, FOR BREACH OF CONTRACT, INTERFERENCE WITH CONTRACT, CONSPIRACY, FRAUD, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, SLANDER, FIGHTING WORDS, CONVERSION, COMBINATIONS TO INJURE REPUTATION, TRADE AND BUSINESS, ASSAULT, MALPRACTICE, FOR MONEY DAMAGES, DECLARATORY JUDGMENTS, INJUNCTIVE AND OTHER RELIEF

THANH VONG HOAI (HOAI), plaintiff, by and through undersigned counsel, brings

this action in law and equity against THANH VAN VO (VO), THACH DUY NGUYEN (THACH), NGUYEN VAN MINH (MINH), NGUYEN THI BACH LUU (LUU), MY-LINH D. SOLAND (SOLAND), MICHAEL S. ARIF (ARIF), SUNTECH COMPANY, a/k/a SUNTECH SUNOCO, INC. (SUNTECH)), JOHN DO (DO), RICHARD RO (RO), NGUYEN TU LO (LO), CARL KO (KO), defendants, jointly and severally, and alleges as follows:

I.

JURISDICTION

__1) This is an action for violations, damages, attorneys' fees, and other relief pursuant to the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. 1961 et seq., Section 10 of the Securities and Exchange Act of 1934, 15 U.S.C. 78j, and the regulations promulgated thereunder, particularly Rule 10 (b)(5) of the Securities and Exchange Commission, the Civil Rights laws, 42 U.S.C. 1983 and 1985

(2); for declaratory relief pursuant to 28 U.S.C. 2201; for injunctive and furhter relief pursuant to 28 U.S.C. 2201; for injunctive and further relief pursuant to 28 U.S.C. 2202; and for damages and other relief pursuant to various state law claims which arise from common nuclei of operative facts which one would expect would be tried in one judicial proceeding.

2) This Court has jurisdiction pursuant to 15 U.S.C. 78aa; 28 U.S.C. 1331 and 1337; 18 U.S.C. 1964; 42 U.S.C. 1983 and the principles of pendant jurisdiction.

II.

VENUE

3) Venue is appropriate in this Court pursuant to 18 U.S.C. 1965(a) because each and every defendant in this action either resides in, is found, has an agent, or transacts his affairs in this judicial district. Venue in this Court is also appropriate because pursuant to 28 U.S.C.

1391(b) inasmuch as the claims arose within this judicial district and inasmuch as all natural defendants with known addresses reside in this judicial district and it is believed that the corporate defendant is doing business here.

III.

THE PLAINTIFF

__4) The plaintiff HOAI is a citizen of the United States of America who has been victimized by organized and violent criminal elements of the Vietnamese refugee community located in northern Virginia.

5) HOAI was defrauded and extorted out of an oriental specialty food store business by the defendants.

6) HOAI was also defrauded and extorted out of a gasoline station by the defendants.

7) Furthermore, HOAI was injured in various other ways through defendants'

various statutory violations and torts.

IV.

THE DEFENDANTS

8) Defendant VO engaged in bribery and extortion in connection with the control of food vending businesses, falsely holds himself out as the owner of a large construction business and was left in physical control of plaintiff's gas station business by virtue of the acts complained of herein.

9) Defendant THACH is believed to be an ex-convict who has been prosecuted for assault and who has admitted to the plaintiff that he had held a gun to the head of newspaper editor Tuyen Giang, in order to make him beg for his life and who had ordered the shooting of four or five customers of the Bistro Restuarant in Arlington, Virginia in 1983 or 1984.

10) Defendant THACH, together with the enterprises with which he was associated,

participated int he conspiracies and the patterns of racketeering activity which deprived the plaintiff of his oriental specialty food store business.

11) Defendant THACH, together with the enterprises with which he was associated, participated in the conspiracies and patterns of racketeering activity which deprived the plaintiff of his gasoline station business.

11A) Defendant SUNTECH SUNOCO, INC., is the corporate entity and enterprise through which plaintiff's gas station business was operated by the defendants after VO and THACH created it in the summer of 1986.

12) Defendant ARIF is an attorney who resides in Arlington, Virginia and who, together with the enterprises with which he was associated, participated in the conspiracies and patterns of racketeering activity identified in paragraphs 9 and 10

above by, inter alia, representing to HOAI that THACH was indeed an officer of the McLean Bank.

13) Defendant MINH resides in Arlington, Virginia and has participated in real estate swindles using various frauds similar to the ones employed in this case. Defendant MINH, together with the enterprises with which he was associated, participated in the conspiracies and patterns of racketeering activity identified in paragraphs 9 and 10 above, and was, together with the defendant LUU, left in physical control of plaintiff's oriental specialty food store business.

14) Defendant LUU resides in Arlington, Virginia and has participated in real estate swindles using various frauds similar to the ones employed in this case. Defendant LUU, together with the enterprises with which she was associated, participated in the conspiracies and

patterns of racketeering activity identified in paragraphs 9 and 10 above, and was, together with defendant MINH, left in physical control of plaintiff's oriental specialty food store business.

15) Defendant SOLAND is an attorney who resides in Alexandria Virginia and who, together with the enterprises with which she was associated, participated in the conspiracies and patterns of racketeering activity identified in paragraphs 9 and 10 above by, inter alia, purporting to represent the plaintiff when in reality operating as a knowing and willing member of the criminal enterprises identified herein. Defendant SOLAND advised the plaintiff to acquiesce to the crimes committed against him.

16) Defendants DO, RO, LO and KO are gang members who, together with the enterprises with which they associated, participated in the conspiracies and

patterns of racketeering activity identified in paragraphs 9 and 10 above by threatening, harassing and terrorizing the plaintiff, plaintiff's family, and other members of the Vietnamese Community including witnesses.

V.

FACTS

__17) Plaintiff HOAI was a Sunoco gas station dealer from 1980 to 1982.

18) In 1983 or 1984 defendant THACH ordered customers at the Bistro restaurant in Arlington to be shot because the owner of that restaurant would not acquiesce to THACH's control of that business enterprise. A number of customers were shot as a result.

19) In August of 1983 the defendant VO engaged in extortion in order to obtain preferred locations for his vending vehicles. The threats included mailing threatening notes written in blood and a

dead bird as well as threatening death and bodily harm to NGUYEN DUY HY, a competitor.

20) In the summer of 1982 the defendants MINH and LUU participated in schemes and artifices to defraud members of the Vietnamese refugee community by soliciting for real estate and business opportunity investments. These schemes involved property located at the corner of Lee Highway and Route 7 in Falls Church, Virginia. With regard to the land:

(a) Defendants MINH and LUU solicited $50,000.00 from the plaintiff.

(b) Defendants MINH and LUU advertised in a Vietnamese language newspaper (Some of which were mailed) that they were undertaking a building project and they sought investments in the amounts of $30,000., $40,000., and $50,000. which would entitle the investor to leasehold space in the building. Many persons did

invest.

(c) Defendants MINH and LUU had no intention of building such a building but rather sold the land for a profit of approximately three hundred and sixty-five thousand dollars ($365,000.).

(d) Although some defrauded investors were repaid many were not.

(e) Defendants MINH and LUU extorted money from some investors by threatening criminal prosecution for welfare fraud.

21) In 1984 defendants MINH and LUU purchased 93.7 acres of land in Fairfax County for $500,000. Defendants MINH and LUU promised the plaintiff that they would pay him and give him some land if he would help them find an attorney and help resolve problems that arose from nonpayment on a note on the land. Plaintiff helped these defendants but they refused to pay the plaintiff or give him land notwithstanding a recent sale of that

land to George Mason University for 1.3 million dollars.

22) In November of 1985 defendant VO lied to the plaintiff, telling plaintiff that VO had a large construction business; that VO had construction equipment worth over $500,000.00; that VO employed over 80 people; and that if plaintiff ever needed anything VO would try to help him.

23) In January and February of 1986 plaintiff's plans to close down his existing business and to put capital into a new business came to the attention of some or all of the defendants.

24) During the month of February, 1986, the plaintiff began negotiating with Sun Refining and Marketing Company (Sunoco) in order to obtain a lease and franchise for a Sunoco gas station.

25) In February of 1986 defendants MINH and LUU asked the plaintiff to work for them and he did so. It was agreed that

plaintiff would be paid between $18. and $25. per hour. Defendants MINH and LUU failed to pay the plaintiff according to the terms of that agreement but did manage to extract information from the plaintiff.

26) During negotiations with the plaintiff in mid-February of 1986, defendant VO falsely represented to the plaintiff that VO would lend the plaintiff $2,000. that very day. Vo repeated his misrepresentations regarding his financial strength, as stated in paragraph 22 above, and once again offered to help the plaintiff purchase a business with friendly financing.

27) During negotiations with the plaintiff sometime in late February 1986, defendant VO once again promised to lend the plaintiff $2,000. on that very day but failed to do so.

28) During the latter part of February, 1986, or the very early part of March,

1986, Sunoco representative Ernie Peele informed the plaintiff that plaintiff would need capital of $71,000. in order to obtain and operate the franchise and lease of a Sunoco gas station.

29) Plaintiff had approximately $35,000.00 available to him at that time through his mother-in-law, who had supplied capital for a number of his earlier businesses, as was known to the defendants. So he needed approximately another $35,000. in available capital to meet the requirement set by Sunoco.

30) During a meeting with the defendant VO in early March, 1986, the plaintiff explained that he had approximately $35,000.00 available for the Sunoco gas station franchise and lease investment but that he needed approximately $35,000. more in order to obtain the Sunoco franchise and lease.

31) During the meeting referred to in

paragraph 30) defendant VO falsely:

(a) Repeated the claims regarding his financial strength, as previously explained in paragraph 22;

(b) asserted that he had $100,000.00 in cash from the operation of his construction business on hand;

(c) stated that he wanted to do something with that money;

(d) stated that HOAI should consider the $100,000.00 as an available line of credit;

(e) stated that, therefore, the $35,000.00 that Hoai needed was immediately available;

(f) stated that therefore, the Sunoco representative should be immediately informed that HOAI had the money specified; and

(g) stated that the terms of the loan would not call for any repayment during the first year of the business and that

interest would be accrued at ten or twelve percent.

32) Defendants MINH and LUU had run for many years an oriental specialty food store known as the Mekong Center Food Store in a mini-mall catering to the ethnic Vietnamese community known as the Mekong Center, located on Wilson Boulevard in Arlington, Virginia. The business had lost much if not most of its customer base and had deteriorated badly.

32A) Defendants MINH and LUU induced the plaintiff, upon a promise that was never fulfilled of supplying a lease-ownership document, to purchase this business by a "loan and earn out" arrangement involving the defendant THACH which was never consummated. This was done in the following manner:

33) During a meeting with defendants MINH and LUU in early March 1986, the plaintiff explained that he had

approximately $35,000.00 available for the Sunoco investment but that he needed $35,000.00 more in order to obtain the Sunoco franchise and lease.

34) During the meeting referred to in paragraph 33, the defendants MINH and LUU lied to the plaintiff by stating that they would lend the plaintiff up to $80,000.00 for the gas station business enterprise.

35) Defendants MINH, LUU, VO and THACH all began communicating with each other regarding plaintiff's available capital during the first three months of 1986 and also regarding the business plans of plaintiff.

36) On or about March 6, 1986, defendants MINH and LUU told the plaintiff:

(a) that because they were involved in a real estate development project in Philadelphia they wanted to sell their oriental specialty food store business.

(b) that they had offers to purchase that oriental specialty food business for $25,000.00 and $30,000.00

(c) but that for personal reasons they wanted to sell the food store business to HOAI for $20,000.00.

37) On or about March 8, 1986, when the plaintiff informed defendants MINH and LUU that his $35,000. available capital was committed to the acquisition and start-up of the Sunoco gas station lease and franchise, MINH and LUU informed the plaintiff that having both businesses was possible and:

(a) that financing would be arranged through a friendly banker;

(b) that they could easily arrange a $50,000.00 loan, $20,000.00 for the purchase price of the food store business from themselves, and $30,000. for purchase of inventory; and

(c) that they would co-sign for such a

loan.

38) The plaintiff accepted the offer referred to in paragraph 37.

39) On or about March 9, 1986, the plaintiff and the defendants MINH and LUU agreed upon the sale terms for the business which were to be incorporated in a lease which was to be the indicia of the ownership of the business by the plaintiff. Thereafter on numerous occasions defendants constantly evaded their responsibility and commitment to sign this document. This evasion rested upon a variety of seemingly plausible excuses, such as translation problems, need for counsel, peculiar superstitious reasons, and other excuses.

40) On or about March 9, 1986, the plaintiff informed defendant VO of the decision to purchase the oriental specialty food store business. Defendant VO encouraged the plaintiff and informed

him that he would lend his support with the gas station business to enable the purchase of the food store business since it would make a lot of money.

41) On or about March 10, 1986, as plaintiff commenced his partial performance of this purchase agreement by beginning the refurbishing of the premises, defendant LUU admitted to having committed insurance fraud by placing out-of-date food in the basement and then purposely flooding the basement in order to obtain insurance money. On or about March 17, 1986, defendant LUU repeated this type of fraud and collected approximately $50,000.00 from the insurance company.

42) During March, 1986, the defendants MINH and LUU represented that the plaintiff would be able to obtain food on credit for the food store enterprise. MINH and LUU had ruined the food store's

credit with suppliers, however, and the plaintiff was unable to obtain food stock or supplies on credit from the oriental specialty distributors and wholesalers in the area.

42A) Having committed to the purchase, plaintiff was then compelled to spend his available capital for inventory pending the promised loan for the "earn-out" purchase of the business. Ultimately he purchased over $49,000.00 worth of inventory because of the failure to provide the promised loan. Defendants MINH, LUU and THACH and the COWBOYS ultimately took control of this inventory by force and subterfuge and he was never reimbursed for it in any way.

43) On or about March 11, 1986, defendants MINH and LUU introduced defendant THACH to the plaintiff as the owner and president of the McLean Bank who was going to provide the purchase money

and inventory acquisition loan.

44) Between March 11, 1986, and March 18, 1986, defendant THACH encouraged the plaintiff to spend plaintiff's capital on inventory in accordance with the agreement to purchase the business from the defendants MINH and LUU, and led the plaintiff to believe that he would arrange for the $50,000.00 loan to avoid permanently tying up plaintiff's capital. On or about March 18, 1986, defendants MINH, LUU and THACH told the plaintiff that the loan forms for the promised $50,000.00 loan would be obtained the next day.

45) On or about March 19, 1986, the defendant THACH:

(a) informed the plaintiff that he would begin processing the loan forms for the promised $50,000.00 loan on the following day;

(b) got the plaintiff to reveal

plaintiff's debts;

(c) promised that the proceeds of the forthcoming loan would be used in part to pay off plaintiff's outstanding credit card debts;

(d) verified that defendant VO was very big in the hot dog vending business; that VO was indeed in the construction business; and that VO could indeed lend the plaintiff money for the gas station business; and

(e) assured plaintiff that he could arrange for a $100,000.00 line of credit for the food store business;

(f) assured plaintiff that he could arrange for $500,000.00 worth of credit with a Chinese food wholesaler located in California.

46) In the meantime, on numerous occasions between mid-February and March 20, 1986, the plaintiff received assurances from defendant VO that not only

the previously promised $35,000.00 was available but also that up to $100,000.00 could be borrowed so that plaintiff could obtain and start up the gas station business in the manner specified. VO also visited the food store and encouraged the plaintiff to buy more food inventory.

47) On or about March 20, 1986, the plaintiff was notified by the Sunoco representative that plaintiff would have to meet with him, the Sunoco representative, and make the agreed upon deposits in the amount of $5,000.00 for the gas station franchise, or dealership, and a $2,000.00 rent deposit on the lease that went with the franchise.

48) On the evening of March 20, 1986, defendant VO assured the plaintiff that VO had $7,000.00 on hand and readily available and that it would be on hand and available the next day.

49) On or about March 21, 1986,

defendant VO met with the representative of Sunoco, Ernie Peele, and the plaintiff, and:

(a) VO delivered $7,000.00 to the plaintiff who, in turn, delivered the money to the Sunoco representative;

(b) VO was told by the Sunoco representative that the gasoline franchise obtained by HOAI could not be assigned or sold without prior written consent from the company;

(c) VO informed the Sunoco representative that VO was the owner of a construction company and that VO was making a $35,000. line of credit loan to HOAI; and

(d) upon specific questioning from the Sunoco representative, Ernie Peele, VO disclaimed any ownership interests or interest in the gas station, hidden or otherwise and disclaimed any partnership, hidden or otherwise, with HOAI and

asserted that he was only interested in making a loan on easy terms, which he stated to Ernie Peele, to his friend HOAI.

50) On or about March 28, 1986, defendants MINH and LUU assured HOAI that defendant THACH was arranging for the $50,000.00 loan and that they would co-sign that loan.

51) On March 31, 1986, plaintiff signed the lease and franchise agreement with Sunoco

52) On March 31, 1986, defendant VO stole the original of the Sunoco lease and franchise agreement.

53) On April 2, 1986, defendant VO opened a bank account at the McLean Branch under the name of Suntech Company and deposited $400.00.

54) On April 3, 1986, $4,000. was deposited into the Suntech account.

55) On April 3, 1986, the balance on the Suntech account was reduced to $2,703.00

56) No further deposits were made into the Suntech account until gas station receipts were obtained by the defendant VO beginning on April 10, and then were deposited into the account beginning on April 14, 1986.

57) Between April 4, 1986, and April 25, 1986, defendants MINH and LUU made repeated promises to deliver a signed lease-ownership document for the oriental food store business to the plaintiff but made a variety of excuses not to do so.

58) During April, 1986, the plaintiff had numerous interstate telephone calls with the defendants which were in furtherance of the scheme to deprive the plaintiff of his food store business and the scheme to deprive the plaintiff of his gas station business.

59) On or about April 7, 1986, defendant VO presented the plaintiff with signature cards and told the plaintiff that he would

open the gas station account with the McLean Bank. Defendant VO led the plaintiff to believe that he would deposit $35,000. into the account.

60) On or about April 10, 1986, the defendant VO informed the plaintiff that only VO had signature authority over the gas station bank account because the bank refused to give HOAI signature authority.

61) On or about April 10, 1986, defendant VO signed six blank checks from the gas station bank account and left them with the plaintiff for payment of, inter alia, gasoline deliveries from Sunoco.

62) On or about April 10, 1986, defendant VO told the plaintiff that he had put about $45,000. in the gasoline station account.

63) On or about April 10, 1986, plaintiff HOAI delivered the checks referenced in paragraph 61, viz: $1,468.00 for inventory on hand; $7,300.00 for

gasoline; $7,400.00 for gasoline; $4,500.00 for diesel fuel; and $9,000.00 for new inventory.

64) On or about April 11, 1986, defendant VO:

(a) began learning the operations of the gas station.

(b) insisted on controlling gas station receipts until his lawyer could draw up a formal loan agreement regarding the $45,000.00; and

(c) began taking the gas station gas receipts.

65) On or about April 15, defendant VO stationed one of his hot dog vending vehicles on the gas station lot, over HOAI's objection.

66) On or about April 17, the defendant THACH told plaintiff that he would not loan plaintiff the $50,000.00 that had been promised.

67) On or about April 18, 1986,

defendant VO stated to plaintiff and the Sunoco representative that he had already loaned HOAI $45,000.00 and now wanted to invest $55,000.00 to become a partner in the gas station business.

68) On or about April 18, 1986, defendant VO told the plaintiff that he would arrange for certified mechanics to work at the station. In reality VO procured untrained laborers, violent criminals, and others from various states to associate with the station. He also promised to finance an advertising and promotion campaign.

69) On or about April 19, 1986, defendant VO misrsepresented his status as a principal in the gas station business with the local licensing authorities.

70) Between April 10 and April 24, 1986, the defendant VO took approximately $1,500.00 from the operation of the gas station each day.

71) On April 24, 1986, Sunoco informed the plaintiff that one of the checks signed by VO had been returned for insufficient funds.

72) On or about April 24, 1986, defendant VO admitted that he had not made the $45,000.00 available as he had claimed earlier.

73) On or about April 24, 1986, defendant THACH stated to plaintiff that the only money VO put into the gas station account was the money that VO took from the gas station in the form of its daily receipts. Defendant THACH also said that he would get the defendants MINH and LUU to sign the promised lease-ownership document for the food store business.

74) On or about April 26, 1986, defendant VO stated that he was unable to get the initial capital which he had promised to plaintiff because his name was not on the gas station lease.

75) On or about April 26, 1986, the plaintiff demanded that the defendant VO leave the gas station. Defendant VO demanded $240,000.00 to do so, claiming that $140,000.00 had been invested in inventory and $100,000.00 had been spent bringing laborers in from out of state.

76) Defendant THACH joined the plaintiff and VO at the gas station on or about April 26, 1986, and threatened to kill the plaintiff unless plaintiff paid VO $100,000.00.

77) On or about April 26, 1986, the defendant ARIF told the plaintiff that THACH was the president and owner of the McLean Bank. On that same day ARIF tried to get the plaintiff to sign a contract selling the gas station business and all documents and indicia of the business, such as the lease and franchise agreement with Sunoco, for one dollar. ARIF was present and knew that HOAI's life was

threatened at this meeting. The plaintiff refused to sign the document.

78) On or about April 27, 1986, the plaintiff went to THACH's home and met with THACH and VO. Three other men were there, one of whom was THACH's bodyguard and one who was present when the plaintiff was threatened at the gas station. At this meeting on or about April 27, 1986:

(a) Defendant THACH stated that he and VO were like the Mafia;

(b) Defendant THACH asserted that the plaintiff promised to give the gas station to VO as a gift; and

(c) Defendant THACH threatened to arrange for the plaintiff's murder.

79) On or about April 28, 1986, defendant THACH assembled gang members, including the defendants DO, LO, RO and KO, at the restaurant on the second floor of the building where plaintiff's food store was located, told the plaintiff that

the gang members had killed many people, and intimated that the gang would kill the plaintiff at THACH's direction. THACH instructed the plaintiff to give defendants MINH and LUU $15,000.00 so as to obtain the long-promised food store lease and ownership document.

80) On or about April 29, 1986, THACH told the plaintiff that he would give VO $15,000.00 and that VO would in turn give the $15,000.00 to plaintiff who would pay the same to defendants MINH and LUU in exchange for the long-promised food store lease and ownership document.

81) On or about April 30, 1986, THACH told the plaintiff that he would get $30,000.00, $15,000.00 of which would go to MINH and LUU for the lease-ownership document, and the other $15,000.00 of which plaintiff could use to purchase inventory. In "exchange" plaintiff was to permit VO to keep the gas station.

82) By promising to loan the plaintiff $30,000.00 THACH and VO on or about April 30, 1986, induced the plaintiff to write out a $30,000.00 promissory note. Once the note was written and signed, however, these defendants did not give the plaintiff the promised money or a copy of the note.

83) On May 1, 1986, THACH told the plaintiff that he had the power of life and death over the plaintiff. THACH threatened to have the plaintiff killed unless the plaintiff signed the contract selling the gas station to VO for one dollar.

84) On May 2, 1986, defendant VO abducted the plaintiff and threatened to injure plaintiff's wife. VO promised HOAI that if HOAI would sign the one dollar contract, HOAI would get $30,000.00 and the food store lease-ownership document.

85) Under fear of death, the plaintiff

signed the one dollar contract in front of a notary.

86) On or about May 2, 1986, VO obtained a $15,000.00 certified check made out to plaintiff from the McLean Bank, drawn on the account of the gas station. VO and THACH then threatened the plaintiff and forced him to endorse the check over to the defendants MINH and LUU.

87) On or about May 3 or 4, 1986, the plaintiff and his young son were accosted by gang members who threatened to kill HOAI and his son if HOAI did not let VO take over the Sunoco gas station business.

88) On or about May 15, 1986, VO threatened to have the plaintiff's legs broken unless plaintiff left the gas station.

89) Between May 2 and May 27, 1986, defendants MINH and LUU repeatedly promised to sign the food store lease-ownership document but never did so.

90) On or about May 27, 1986, defendants MINH and LUU added a padlock to the building in which the plaintiff's food store business was located and thus locked the plaintiff out of his food store business.

91) On or about May 28, 1986, members of the gang arrived at the restaurant and were joined by defendants MINH, LUU and THACH. The defendants broke off the padlock to which the plaintiff had been given the only key as part of the ownership of the food store business. Thus defendants MINH, LUU and THACH gained physical control over plaintiff's oriental food store business.

92) On or about May 28, 1986, the plaintiff hired defendant SOLAND as his attorney. SOLAND mailed letters regarding both the gas station and the oriental specialty food business. She participated in interstate telephone calls to further

the frauds involved with each of the businesses. SOLAND, and/or SOLAND's partner represented MINH and LUU without disclosing that fact to the plaintiff. These frauds are consistent with SOLAND's pattern of fraudulent activity relating to other clients.

93) On or about June 5, 1986, the plaintiff, SOLAND, VO, THACH, and Sunoco representative Ernie Peele all met at the gas station, where the following, inter alia, occurred:

(a) THACH ordered everyone off the property;

(b) THACH represented himself as VO's attorney by way of an interstate telephone call prior to his arrival;

(c) THACH accused PEELE of taking a $10,000.00 bribe from VO;

(d) PEELE declared that HOAI was the only authorized dealer and franchisee of the station as far as Sunoco was

concerned;

(e) THACH called the police;

(f) SOLAND advised HOAI to leave and promised to take action but did not; and

(g) MINH and LUU arrived and conferred with SOLAND and the other defendants.

94) On or about July 7, 1986, SOLAND once again stated that she would take court action on behalf of the plaintiff, but did not do so.

95) On or about July 14, 1986, VO and THACH, in the company of ARIF, threatened to kill plaintiff if he did not end his efforts to regain his gas station.

96) ARIF entered into a settlement agreement on behalf of the other defendants whereby the Sunoco representative Ernie PEELE would act as a final arbitrator to decide who was entitled to occupy the gas station premises as the legitimate Sunoco franchisee. Although PEELE designated

HOAI, neither ARIF nor the other defendants would permit the plaintiff to have possession of the station.

97) On or about August 20, 1986, the defendant SOLAND mailed a letter to the plaintiff, which she backdated to August 15, 1986, wherein she admitted to having a conflict of interest and later backdated a second letter of withdrawal on which she forged plaintiff's signature.

98) On or about August 25, 1986, Ernie PEELE stated that HOAI was the only person authorized to operate the gas station and HOAI and Ernie PEELE both signed a notice requesting VO and his hired hands, including the gang members, to peacefully surrender the premises. It was presented at the gas station that day in the presence of police officers and HOAI demanded that the VO employees leave and they did so.

99) On or about August 26, 1986, VO

attempted to take over the gas station by force and falsely accused HOAI of stealing $7,500.00.

100) VO's operation of the gas station was improper and demonstrated his lack of qualification for the franchise in that:

(a) VO demanded sex from female employees;

(b) VO failed to withhold taxes from employee compensation or keep proper employee records;

(c) VO permitted customers to be defrauded;

(d) VO failed to maintain any business records;

(e) no payments were made for worker compensation; and

(f) VO permitted the unlawful conversion and use of customers' automobiles when brought in for repairs.

101) The defendants have threatened, harassed and corrupted potential

witnesses, or attempted to do so and have fabricated false evidence.

102) The defendants furthered the various frauds by use of the mails by transmitting, inter alia, the following:

(a) June 12, 1986, letter from ARIF to HOAI (furthering the $15,000.00 loan fraud);

(b) August 15, 1986, letter from SOLAND to HOAI (furthering the oriental specialty food store fraud);

(c) July 21, 1986, letter from SOLAND to Sunoco (furthering the gas station fraud);

(d) June 10, 1986, letter from SOLAND to the McLean Bank (furthering the $15,000. loan fraud);

(e) June 10, 1986, letter from SOLAND to Sunoco (furthering the gas station fraud);

(f) April 3, 1986, transmittal from VO to HOAI (furthering the gas station fraud);

(g) May 12, 1986, transmittal from VO or

SUNTECH COMPANY to MINH (furthering gas station fraud);

(h) June 10, 1986, letter from SOLAND to VO (furthering gas station fraud);

(i) Sometime in May and June, 1986, letters from ARIF to VO (furthering the gas station and $15,000.00 loan frauds);

(j) Various letters and transmittals received by VO during the operations of the gas station business.

(k) Various other letters and transmittals to be identified and obtained through discovery.

VI.

VIOLATIONS OF LAW

COUNT I

RICO VIOLATIONS

__104) Paragraphs 1 through 103 are hereby incorporated by reference.

105) The defendants violated 18 U.S.C. 1962 (a) because they received and continue to receive income derived from

patterns of racketeering activity and used or invested a part of such income to acquire an interest in, establish and operate enterprises in and which affect interstate or foreign commerce.

106) The defendants violated 18 U.S.C. 1962 (b) because, through a pattern of racketeering activity, they acquired or maintained, directly or indirectly, an interest in or control of one or more enterprises which are engaged in or which affect interstate and/or foreign commerce.

107) The defendants violated 18 U.S.C. 1962 (c) because they are employed by or associated with enterprises engaged in or which affect interstate commerce and they conduct or they participate directly or indirectly in the conduct of such enterprises' affairs through a pattern of racketeering activity.

108) The defendants violated 18 U.S.C. 1962 (d) because they conspired to violate

the provisions of 18 U.S.C. 1962 (a), (b), and (c).

109) Each and every one of the defendants is an individual or entity capable of holding a legal or beneficial interest in property.

110) SUNTECH SUNOCO INC. affects interstate commerce. The oriental specialty food store business affects interstate and foreign commerce.

111) The defendants or the enterprises they were and are associated with participated in patterns of racketeering activity, which patterns of racketeering activity include:

(a) attempted murder through contract (par. 18 above as incorporated by reference herein);

(b) threats of murder (pars. 18, 19, 76, 78, 79, 83, 84, 86, 87, and 95, as incorporated by reference herein);

(c) extortion (pars. 18, 19, 20, 34, 40,

44, 45, 46, 49, 50, 66, 67, 71, 72, 73, 74, 75, 76, 77, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 95, and 99, as incorporated by reference herein;

(d) kidnapping (par. 84 as incorporated by reference herein);

(e) bribery (par. 19 as incorporated by reference herein);

(f) extortionate credit transactions (pars. 31, 34, 35, 37, 40, 43, 44, 45, 46, 48, 49, 50, 66, 67, 71, 72, 73, 74, 76, 77, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91 as hereby incorporated by reference);

(g) mail fraud (pars. 20, 21, 22, 25, 26, 27, 30-37, 39-46, 48-50, 53, 55, 56, 58-103 as incorporated by reference herein);

(h) wire fraud (pars. 20, 21, 22, 25, 26, 27, 30-37, 39-46, 48-50, 53, 55, 56, 58-103 as incorporated by reference herein);

(i) obstruction of justice (pars. 92, 93, 94, 96, 97, 99 as hereby incorporated by reference);

(j) interference with commerce (par. 19 as incorporated herein by reference);

(k) interstate of transportation of unlawfully converted property (pars. 52, 56, 59, 60, 61, 62, 63, 64, 70 and 71 as incorporated herein by reference);

(l) fraud in the sale of securities (pars. 20, 21, 31, 34, 35, 39, 57, 77, 84, 85, 86, 87, 89, 90 as incorporated herein by reference).

112) With respect to the extortion alleged in paragraph 111 (c), the person alleged to have committed the extortion did, in violation of Va. Code 18.2-10 (c) through the acts specified in the paragraphs incorporated by reference, where such acts occurred in Virginia, threaten the property, person or character of the victim and said victim parted with

money, property, or pecuniary benefit or some note of evidence of debt. Where said acts occurred in the District of Columbia the person who committed extortion did obtain or attempted to obtain the property of another with the other's consent which was induced by wrongful use of actual or threatened force or violence or by wrongful threat of economic injury in violation of the District of Columbia 22-3851.

113)

4113) With respect to the mail fraud and wire fraud alleged in paragraphs 111 (g) and (h) the schemes and artifices to defraud included:

(a) a scheme to defraud the plaintiff out of his $35,000.00 capital;

(b) a scheme to defraud the plaintiff out of $15,000.00 through fraud;

(c) a scheme to defraud the plaintiff out of his oriental specialty food store business;

(d) a scheme to defraud the plaintiff out of his gas station business;

(e) a scheme to defraud investors in the land swindle described in paragraph 20;

(f) a scheme to defraud investors in the other land swindle described in paragraph 21;

(g) a scheme to defraud an insurance company as described in paragraph 41;

(h) a scheme to defraud the government out of taxes as described in paragraph

100; and

(i) various schemes to defraud various clients by defendant SOLAND.

114) With respect to the allegation involving fraud in the sale of securities the frauds and securities involved were:

(a) false promises to provide an oriental specialty food store lease-ownership document to the plaintiff;

(b) falsehoods and material omissions used to obtain a one dollar sale of the franchise and lease and other documents showing ownership of the gas station business; and

(c) falsehoods and material omissions related to the real estate swindles referenced in paragraphs 20 and 21.

115) With respect to the interstate shipment of unlawfully converted property, as alleged in paragraph 111 (k) the plaintiff states that gasoline and other deliveries to the station were moved

across state lines and that the cash receipts taken by the defendant VO were taken across a state line.

116) With respect to the enterprises from which income was derived, which were acquired through patterns of racketeering, and whose affairs were being conducted through a pattern of racketeering activity the following enterprises were involved:

(a) the enterprise consisting of THACH and certain gang members who were associated in fact;

(b) the enterprise consisting of THACH, MINH and LUU who were associated in fact;

(c) the enterprise consisting of THACH and VO who were associated in fact;

(d) the enterprise consisting of all the defendants who were associated in fact;

(e) the enterprise consisting of MINH and LUU who were associated in fact;

(f) the Mekong Center;

(g) the oriental specialty food store;

(h) the gas station.

117) All of the enterprises referred to in paragraph 116 affected interstate or foreign commerce.

118) All of the defendants conspired to violate 1962 (a), (b) and (c), committed one or more overt acts in furtherance of said violations and joined into the various conspiracies at various times.

COUNT II

VIOLATIONS OF THE SECURITIES AND EXCHANGE ACT OF 1934

119) Paragraphs 1-103 are hereby incorporated by reference.

120) The defendants violated the Securities and Exchange Act of 1934 and Rule 10 (b)5 promulgated thereunder by using false and misleading statements and/or omitting to state material information necessary, in light of the circumstances, to make the statements that they did make not misleading, to the

plaintiff regarding:

(a) the ability of the restaurant business to obtain credit;

(b) the financial resources that the defendants were to have made available to the plaintiff;

(c) the securities involved in connection with the sale or purchase thereof, namely:

(d) the documents listed in the $1. contract instrument between HOAI and VO concerning the gas station business;

(e) the lease agreed upon concerning the food store business but never executed by defendants;

(f) documents connected with the land swindles referenced in paragraphs 20 and 21.

COUNT III

BREACH OF CONTRACT

121) Paragraphs 1-103 are hereby incorporated by reference.

122) THACH breached his contract with the plaintiff to make credit available.

123) MINH and LUU breached their contract to pay for services rendered by HOAI and their contract to provide credit for an "earn-out" purchase to HOAI and their contract to sell the food store business to HOAI.

124) VO breached his contract with the plaintiff to make credit available.

125) SOLAND breached her contract with the plaintiff to institute legal action against the other defendants.

126) ARIF, VO and THACH breached their contract to abide by the decision of Sunoco Representative Ernie PEELE as to the possession and ownership of the gas station business.

127) VO breached the alleged contract for the sale of the gas station business for one dollar in that he never gave the dollar and then plaintiff, not admitting

the validity of the contract, nonetheless specially and formally rescinded for that breach.

COUNT IV

INTERFERENCE WITH CONTRACT

128) Paragraphs 1-103 are hereby incorporated by reference.

129) Defendants interfered with HOAI's various contracts identified in paragraph 130 below because each of the defendants:

(a) knew of plaintiff's contractual rights with others;

(b) interfered therein without justification; and

(c) damaged the plaintiff thereby.

130) The contracts interfered with include HOAI's contracts with Sunoco and HOAI's contractual rights with each of the defendants other than the interfering defendant or defendants as identified particularly in paragraphs 122 through 127.

COUNT V

FRAUD

131) Paragraphs 1-103 are hereby incorporated by reference.

132) The defendants committed fraud because:

(a) They made representations regarding the availability of credit with knowledge that the representations were false;

(b) They intended that the plaintiff rely on said representations in making his investment decisions;

(c) The representations made were in fact false;

(d) The plaintiff did in fact rely upon said representations in making his investment decisions; and

(e) The plaintiff was injured in so relying on the representations.

COUNT VI

MALPRACTICE

133) Paragraphs 1-103 are hereby

incorporated by reference.

134) Defendant SOLAND had a duty to HOAI to act as his attorney and counsel.

135) Defendant SOLAND failed to carry out her duty to plaintiff by, inter alia, conflicts of interest, failing to pursue his lawful objectives as her client, breach of trust, duality of agency, voilating the applicable disciplinary rules of her profession.

COUNT VII

COMBINATIONS TO INJURE REPUTATION, TRADE AND BUSINESS

136) Paragraphs 1-103 are hereby incorporated by reference.

137) The defendants violated VA. Code Secs. 18.2-499 and 18.2-500 by combining, associating and agreeing to wilfully and maliciously injure:

(a) plaintiff's oriental specialty food business;

(b) plaintiff's gasoline station

business; and

(c) plaintiff's business reputation with Sunoco, other gas station and petroleum suppliers, food wholesalers and jobbers, suppliers of goods and services to these businesses, the Vietnamese ethnic community generally and the business community in which he must live and work.

COUNT VIII.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

137) Paragraphs 1-103 are hereby

incorporated by reference.

138) Defendants intentionally inflicted emotional distress and mental suffering upon the plaintiff by willfully and maliciously threatening the plaintiff and the plaintiff's family with physical injury through extortion and through through deception.

139) The said infliction of emotional distress and mental suffering was wanton and vindictive.

COUNT IX

SLANDER AND FIGHTING WORDS

140) Paragraphs 1-103 are hereby incorporated by reference.

141) The various defendants did at various times as set out above slander the plaintiff, for example:

(a) The defendant VO told many people the lie that plaintiff was a liar and a a cheat who had sold him his business and then tried to lie about it;

(b) VO told the lie that the plaintiff had slept with his wife;

(c) THACH told the lie that plaintiff had stolen one hundred thousand dollars form the sister of THACH;

(d) MINH, LUU, THACH and VO told Ernie Peele that plaintiff was a person of bad business reputation and of low integrity in the opinion of the other Vietnamese;

(e) SOLAND disparaged the business ability of the plaintiff to the Vietnamese community;

(f) MINH and LUU stated that the plaintiff was hated and disliked in the Vietnamese community and that the plaintiff and his wife were delinquent in paying the rent on the food store; and

(g) the defendants DO, RO, LO and KO told numerous people that the plaintiff was a liar and a cheat and had no business ability.

142) The foregoing statements, together

with the physical threats against the plaintiff, violated Virginia's fighting words statute, VA. Code Sec. 8.01-45 because in their common acceptation they are construed as insults and tend to violence and to breach of peace or are disparagements of plaintiff's business abilities.

COUNT X

CONSPIRACY

143) All of the foregoing paragraphs and allegations are incorporated herein by reference.

144) The defendants formed various conspiracies and conspired together.

145) The purpose of their conspiracy as set out herein was to commit wrongful acts against the plaintiff.

146) The plaintiff was harmed by the conspiracies of the defendants in his two businesses as set out herein and in his general reputation and business

reputation.

VII

INJURY AND DAMAGES

__147) As a result of the defendants actions the plaintiff has been injured in his business and property in the following amounts:

(a) $175,000.00 representing the market value of the gas station franchise that was destroyed by the acts of the defendants complained of;

(b) Special damages in the form of lost profits on the gas station dealership over the average life of such a dealership based on the facts and history of this site and station in excess of $25,000,000.00. based also on plaintiff's operation of it;

(c) Special damages in the form of lost profits on the oriental specialty food store business over the life of the remaining lease time in excess of

$12,000,000.00 as based on its history and the facts of its operation under the plaintiff;

(d) $64,000.00 representing the value of the inventory of the food store taken from plaintiff unlawfully by the defendants;

(e) $6,000.00 in rent payments on the food store;

(f) $2,000.00 for services and materials in refurbishing the food store; and

(g) $2,100.00 on sales taxes unlawfully converted by the defendants to their own use.

148) As a result of the defendants' actions plaintiff suffered emotional distress and his business reputation was injured.

149) Plaintiff has been injured in many and various ways that cannot be compensated for by money damages alone.

VIII.

PRAYER

__WHEREFORE the plaintiff respectfully prays the Court for $37,074,100.00 in compensatory and business and property special damages, treble damages in the amount of $111,222,300.00, damages for emotional distress and mental suffering in the amount of $10,000,000., punitive damages in the amount of $37,074,100.00 and the attorneys's fees for this suit and litigation and for equitable relief and for such other legal and equitable relief as to the Court shall seem just and proper.

IX.

JURY DEMAND

Plaintiff respectfully demands trial by jury.

Respectfully submitted,

THANH VONG HOAI
BY COUNSEL

Laurence A. Elgin
2762 Woodley Place, N.W.
Washington, D.C. 20008
appearing Pro Hac Vice
(202) 628-1114

William Steven Paleos
PALEOS & KURLANSKY
431 N. Lee Street
Alexandria, Virginia 22314

(703) 941-0387

CERTIFICATE OF SERVICE

I hereby certify that I served a true and accurate copy of the foregoing AMENDED COMPLAINT by United States Mail, first class, postage prepaid, this _____day of May, 1987, upon the following:

Thomas Gentile, Esq.
P.O. Box 612
Arlington, Virginia 22216

Alan Croft, Esq.
4804 University Drive
Fairfax, Virginia 22030

Alan H. Yamamoto
9677 Main Street
Suite B
Fairfax, Virginia 22031

_____
William Steven Paleos

88-765

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACK LUU, THAN VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

Appendix IV (Supplemental)
Predicate Act Statutes Under Rico

Laurence A. Elgin*
4816 Rodman Street, N.W.
Washington, D.C. 20016
(202) 628-1114

John D. Hemenway
4816 Rodman Street, N.W.
Washington, D.C. 20016

*Counsel of record

TABLE OF CONTENTS OF APPENDIX IV,
RELEVANT STATUTES (SUPPLEMENTAL)

STATUTE PAGE

The RICO STATUTES, 18 U.S.C. et seq., were filed with the petition itself, in the back, separated by a dividing sheet from the main brief. As an aid to the Court we now provide supplementally the predicate act statutes referred to in 18 U.S.C. 1961, both the federal ones mentioned specifically and the state statutes referred to generally that are involved here, being specifically the murder and extortion statutes of the District of Columbia and Virginia:

State Predicate Act statutes 1

District of Columbia Code, Title 22 1

Sec. 22-2401. Murder in the first degree -- Purposeful killing; killing while perpetrating certain crimes. 1

Sec. 22-2403. Murder in second degree. 2

Sec. 22-2404. Penalty for murder in the first and second degrees. 2

Sec. 22-3851. Extortion. 3

from the Code of Virginia, Title 18 4
Sec. 18.2-30. Murder and manslaughter declared felonies. 4

Sec. 18.2-31. Capital murder defined; punishment. 4

Sec. 18.2-32. First and second degree murder defined: punishment. 5

Sec. 18.2-59. Extorting money, etc. by threats. 5

Federal predicate offenses specified in 18 USC Secs. 1961 that are involved here from title 18, United States Code 6

Section 891-894 (relating to extortionate credit transactions):
Sec. 891. Definitions and rules of construction 6

Sec. 892. Making extortionate extensions of credit 9

Sec. 893. Financing extortionate extensions of credit 13

Sec. 894. Collection of credit by extortionate means 14

Section 1341 (relating to mail fraud) 16

Section 1341. Frauds and swindles 16
Section 1343 (relating to wire fraud)
Section 1343. Fraud by wire, radio, or television 17

Section 1503 (relating to the obstruction of justice)

Section 1503. Influencing or injuring officer, juror or witness generally 18

Section 1951 (relating to interference with commerce, robbery or extortion):

Section 1951. Interference with commerce by threats or violence 18

RELEVANT STATUTES (SUPPLEMENTAL)

The RICO STATUTES, 18 U.S.C. et seq., were filed with the petition itself, in the back, separated by a dividing sheet from the main brief. As an aid to the Court we now provide supplementally the predicate act statutes referred to in 18 U.S.C. 1961, both the federal ones mentioned specifically and the state statutes referred to generally that are involved here, being specifically the murder and extortion statutes of the District of Columbia and Virginia:

State Predicate Act statutes:

from the District of Columbia Code, Title 22:

Sec. 22-2401. Murder in the first degree -- Purposeful killing; killing while perpetrating certain crimes.

Whoever, being of sound memory and discretion, kills another purposely

[sic], either of deliberate and premeditated malice or by means of poison, or in perpetrating or attempting to perpetrate any offense punishable by imprisonment in the the penitentiary, or without purpose to do so kills another in perpetrating or attempting to perpetrate any ... mayhem, robbery,... is guilty of murder in the first degree.

Sec. 22-2403. Murder in second degree.

Whoever with malice aforethought, except as provided in Secs. 22-2401, 22-2402, kills another, is guilty of murder in the second degree.

Sec. 22-2404. Penalty for murder in the first and second degrees.

(a) The punishment of murder in the first degree shall be life imprisonment.

(b) Notwithstanding any other provision of law, a person convicted of first-degree murder and upon whom a sentence of

life imprisonment is imposed shall be eligible for parole only after the expiration of 20 years from the date he commences to serve his sentence.

(c) Whoever is guilty of murder in the second degree shall be imprisoned for life or not less than 20 years.

Sec. 22-3851. Extortion.

(a) A person commits the offense of extortion if:

(1) That person obtains or attempts to obtain the property of another with the other's consent which was induced by wrongful use of actual or threatened force or violence or by wrongful threat of economic injury; or

(2) That person obtains or attempts to obtain property of another with the other's consent which was obtained under color or pretense of official right.

(b) Any person convicted of extortion shall be fined not more than $10,000 or imprisoned for not more than 10 years, or both.

from the Code of Virginia, Title 18:

Sec. 18.2-30. Murder and manslaughter declared felonies. -- Any person who commits capital murder, murder of the first degree, murder of the second degree, voluntary manslaughter, or involuntary manslaughter, shall be guilty of a felony.

Sec. 18.2-31. Capital murder defined; punishment. -- The following offenses shall constitute capital murder, punishable as a Class I felony:

....

(b) The willful, deliberate and premeditated killing of any person by another for hire.

....

(g) The willful, deliberate and premeditated killing of more than one person as a part of the same act or transaction; ....

Sec. 18.2-32. First and second degree murder defined: punishment. -- Murder, other than capital murder, by poison, lying in wait, imprisonment, starving, or by any willful, deliberate and premeditated killing, or in the commission of, or attempt to commit, ... robbery, burgalray, ... except as provided in Sec. 18.2-31, is murder of the first degree, punishable as a Class 2 felony.

All murder other than capital murder and murder in the first degree is murder of the second degree and is punishable as a Class 3 felony.

Sec. 18.2-59. Extorting money, etc. by threats. -- If any person threaten injury

to the character, person or property of another person or accuse him of any offense and thereby extort money, property, or pecuniary benefit or any note, bond, or other evidence of debt from him or any other person, he shall be guilty of a Class 5 penalty.

Federal predicate offenses specified in 18 USC Secs. 1961 that are involved here: from title 18, United States Code:

Section 891-894 (relating to extortionate credit transactions):

Sec. 891. Definitions and rules of construction

For purposes of this chapter:

(1) To extend credit means to make or renew any loan, or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising,

may or will be deferred.

(2) The term "creditor", with reference to any given extension of credit, refers to any person making that extension of credit, or to any person claiming by, or under, or through any person making that extension of credit.

(3) The term "debtor", with reference to any given extension of credit, refers to any person to whom that extension of credit is made, or to any person who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same.

(4) The repayment of any extension of credit includes the repayment, satisfaction, or discharge in whole or in part of any debt or claim, acknowledged

or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(5) To collect an extension of credit means to induce in anyh way any person to make repayment thereof.

(6) An extortionate extension of credit is any extension of credit with respect to which it is the understanding of the creditor and the debtorat the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(7) An extortionate means is any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation or property of any person.

(8) The term "State" includes the District of Columbia,...

(9) State law, including conflict of laws rules, governing the enforceability through civil judicial processes of repayment of any extension of credit or the performance of any promise given in consideration thereof shall be judicially noticed. This paragraph does not impair any authority which any court would otherwise have to take judicial notice of any matter of State law.

Sec. 892. Making extortionate extensions of credit

(a) Whoever makes any extortionate extension of credit, or conspires to do so, shall be fined not more than $10,000 or imprisoned not more than 20 years, or both.

(b) In any prosecution under this section, if it is shown that all of the

following factors were present in connection with the extension of credit in question, there is prima facie evidence that the extension of credit was extortionate, but this subsection is nonexclusive and in no way limits the effect or applicability of subsection (a):

(1) The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable, through civil judicial processes against the debtor

(A) in the jurisdiction within which the debtor, if a natural person, resided, or

(B) in every jurisdiction within which the debtor, if other than a natural person, was incorporated or qualified to do business at the time the extension of credit was

made.

(2) The extension of credit was made at a rate of interest in excess of an annual rate of 45 per centum calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal.

(3) At the time the extension of credit was made, the debtor reasonably believed that either

(A) one or more extensions of credit by the creditor had been collected or attempted to be collected by extortionate means, or the nonrepayment thereof had been punished by extortionate means: or

(B) the creditor had a reputation for the use of extortionate means to collect extensions of credit or to punish the nonrepayment thereof.

(4) Upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then outstanding, including any unpaid interest or similar charges, exceeded $100.

(c) In any prosecution under this section,if evidence has been introduced tending to show the existence of the circumstances described in subsection (b)(1) or (b)(2), and direct evidence of the actual belief of the debtor as to the creditor's collection practice is not available, then for the purpose of showing the understanding of the debtor and the creditor at the time the extension of credit was made,t he court

may in its discretion allow evidence to be introduced tending to show the reputation as to collection practices of the creditor in any community of which the debtor was a member at the time of the extension.

Sec. 893. Financing extortionate extensions of credit

Whoever willfully advances money or property, whether as a gift, as a loan, as an investment, pursuant to a partnership or profit-sharing agreement, or otherwise, to any person, with reasonable grounds to believe that it is the intention of that person to use the money or property so advanced directly or indirectly for the purpose of making extortionate extensions of credit, shall be fined not more than $10,000 or an amount not exceeding twice the value of the money or property so advanced, whichever is greater, or shall be

imprisoned not more than 20 years, or both.

Sec. 894. Collection of credit by extortionate means

(a) Whoever knowingly participates in any way, or conspires to do so, in the use of extortionate means

(1) to collect or attempt to collect any extension of credit, or

(2) to punish any person for the nonrepayment thereof,

shall be fined not more than $10,000 or imprisoned not more than 20 years, or both.

(b) In any prosecution under this section, for the purpose of showing an implicit threat as a means of collection, evidence may be introduced tending to show that one or more extensions of credit by the creditor were, to the knowledge of the person against whom the implicit threat was alleged to have been

made, collected or attempted to be collected by extortionate means or that the nonrepayment thereof was punished by extortionate means.

(c) In any prosecution under this section, if evidence has been introduced tending to show the existence, at the time the extension of credit in question was made, of the circumstances described in section 892(b)(1) or the circumstances described in section 892(b)(2), and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing that words or other means of communication, shown to have been employed as a means of collection, in fact carried an express or implicit threat, the court may in its discretion allow evidence to be introduced tending to show the reputation

of the defendant in any community of which the person against whom the alleged threat was made was a member at the time of the collection or attempt at collection.

Section 1341 (relating to mail fraud):

Section 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises,... for the purpose of executing such scheme or artifice or attempting to do so, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any suh matter of thing, or knowingly causes to be delivered by mail according to the direction thereon, or at

the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

Section 1343 (relating to wire fraud),

Section 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more

than five years, or both.

Section 1503 (relating to the obstruction of justice)

Section 1503. Influencing or injuring officer, juror or witness generally

Whoever .... corruptly, ... influences, obstructs, or impedes, or endeavors to influence, obstruct or impede, the due administration of justice, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Section 1951 (relating to interference with commerce, robbery or extortion):

Section 1951. Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens phsical violence to any person or property in furtherance of

a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years or both.

(b) As used in this section --

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violance, [sic] or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force,

violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, ... all commerce between any point in a state,... or the District of Columbia and any point outside thereof; all commerce between any points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

Supreme Court, U.S.
FILED
DEC 5 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-765

In The

Supreme Court of the United States

October Term, 1988

THANH VONG HOAI,

Petitioner,

v.

THANH VAN VO; THACH DUY NGUYEN; MY-LINH D. SOLAND; NGUYEN THI BACH LUU; THANH VAN VO, d/b/a SUNTECH SUNOCO, INC.; AND MICHAEL ARIF,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENT MY-LINH D. SOLAND'S BRIEF IN OPPOSITION

W. Michael Holm
Hazel, Thomas, Fiske,
Beckhorn & Hanes, P.C.
510 King Street, Suite 200
Alexandria, Virginia 22314
(703) 838-5144
Counsel of Record for
Respondent My-Linh D. Soland

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED FOR REVIEW

I. Whether the original Complaint in this action, comprising some 133 pages, 367 paragraphs and 24 counts, was properly dismissed for violating Rule 8 of the Federal Rules of Civil Procedure.

II. Whether Count One of the Amended Complaint, alleging a violation of the Racketeer Influenced and Corrupt Organizations Act, was properly dismissed for failing to adequately allege a "pattern" of racketeering activity or an "enterprise" within the requirements of the Act.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 3

ARGUMENT 4

I. The District Judge Properly Dismissed Petitioner's Original Complaint for Violating Rule 8 of The Federal Rules of Civil Procedure 4

II. Count One of the Amended Complaint Alleging Violations of the RICO Act Failed to State A Cause of Action, Its Dismissal Was Proper, And Petitioner Has Demonstrated No Compelling Reasons for This Court to Grant Certiorari 7

A. Enterprise 8

B. Pattern 11

C. Predicate Acts 16

D. The Amended Complaint Fails to State a Cause of Action for RICO Violations Against Soland Under Any Parts of 18 U.S.C. § 1962 20

CONCLUSION 22

TABLE OF AUTHORITIES

Page

CASES

Adair v. Hurst International Resources Corp., 526 F. Supp. 736 (N.D. I11. 1981) 21

Arev v. Harris, No. 74 - 2360 (4th Cir. June 17, 1975) 6

Atkinson v. Anadarko Bank & Trust, Co., 808 F.2d 438 (5th Cir. 1987) 10

Bank of America v. Touche Ross & Co., 782 F.2d 966 (11th Cir. 1986) 15

B.F. Hirsch v. Enright Refining Company, Inc., 751 F.2d 628 (3d Cir. 1984) 10

Bishop v. The Corbitt Marine Ways, Inc., 802 F.2d 122 (5th Cir. 1986) 10

Brown v. Califano, 75 F.R.D. 497 (D.D.C. 1977) 6

Chou'e v. United States, 413 F. Supp. 475 (N.D. Ok. 1976) 6

DeFina v. Latimer, 79 F.R.D. 5 (E.D.N.Y. 1977) 6

Entre Computer Centers, Inc. v. FMG of Kansas City, Inc., 819 F.2d 1279 (4th Cir. 1987) 10

Estate of Dearing by Dearing v. Dearing, 646 F. Supp. 903 (S.D. W.Va. 1986) 7, 14

Harrell v. Directors of Bur. of Narcotics, 70 F.R.D. 444 (E.D. Tenn. 1975) 5

TABLE OF AUTHORITIES–Continued

Page

Holsev v. Collins, 90 F.R.D. 122 (D.Md. 1981)..... 5, 6

In re Action Industries Tender Offer, 572 F. Supp. 846 (E.D. Va. 1983) 11, 17

International Data Bank, Ltd. v. Zepkin, 812 F.2d 149 (4th Cir. 1987)..... 12, 13, 14, 16

Lipin Enterprises v. Lee, 803 F.2d 322 (7th Cir. 1986) 13, 14

Marks v. Pannell Kerr Forster, 811 F.2d 1108 (7th Cir. 1987) 12

McMurtry v. Brasfield, 654 F. Supp. 1222 (E.D. Va. 1987)..... 18, 19

Medical Emergency Service Associates v. Foulke, 633 F. Supp. 156 (N.D. Ill. 1986), *aff'd*, 844 F.2d 391 (7th Cir. 1988)..... 13

Northern Trust Bank/O'Hare, N.A. v. Inryco, Inc., 615 F. Supp. 828 (N.D. Ill. 1985) 12

One-O-One Enterprises, Inc. v. Caruso, 668 F. Supp. 693 (D.D.C. 1987), *aff'd*, 848 F.2d 1283 (D.C. Cir. 1988)..... 12

Paul S. Mullin & Associates, Inc. v. Bassett, 632 F. Supp. 532 (D.Del. 1986)..... 18

Prezzi v. Berzak, 57 F.R.D. 149 (S.D.N.Y. 1972)..... 6

Production & Leasing, Ltd. v. Hotel Conquistador, Inc., 573 F. Supp. 717 (D. Nev. 1982), *aff'd*, 709 F.2d 21 (9th Cir. 1983)..... 21

Rae v. Union Bank, 725 F.2d 478 (9th Cir. 1984) 10

TABLE OF AUTHORITIES–Continued

Page

Schofield v. First Commodity Corporation of Boston, 793 F.2d 28 (1st Cir. 1986) 10

Sedima v. Imrex Company, Inc., 473 U.S. 479 (1985) 11, 12, 15, 16

Serig v. South Cook County Service Corp., 581 F. Supp. 575 (N.D. Ill. 1984) 17, 18

State v. Sappenfield, 505 N.E.2d 504 (Ind. 1987) 15

Superior Oil Co. v. Fulmer, 785 F.2d 252 (8th Cir. 1986) 12

Taylor v. Bear Stearns and Company, 572 F. Supp. 667 (N.D. Ga. 1983) 7

Torwest v. Dick, 810 F.2d 925 (10th Cir. 1987) 12

Tyco Trucking Company, Inc. v. Belk Store Services, Inc., 608 F. Supp. 812 (W.D.N.C. 1985) 10

United States v. Bledsoe, 674 F.2d 647 (8th Cir. 1982) 8, 9, 10

United States v. Computer Science Corp., 689 F.2d 1181 (4th Cir. 1982) 9

United States v. Griffin, 660 F.2d 996 (4th Cir. 1981) 8, 9, 10

United States v. Hobson, 825 F.2d 364 (11th Cir. 1987) 15

United States v. Kreimer, 609 F.2d 126 (5th Cir. 1980) 17

TABLE OF AUTHORITIES–Continued

Page

United States v. Mandel, 591 F.2d 1347 (4th Cir. 1979) 21

United States v. Tillett, 763 F.2d 628 (4th Cir. 1985) 8

United States v. Turkette, 452 U.S. 576 (1981) 8

Walk v. Baltimore and Ohio Railroad, 847 F.2d 1100 (4th Cir. 1988) 14

4447 Corporation v. Goldsmith, 504 N.E.2d 559 (Ind. 1987) 15

STATUTES

Federal Rules of Civil Procedure, Rule 8 ..... *passim*

The Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* ("RICO") ... *passim*

TREATISES

5 Wright & Miller, *Federal Practice and Procedure*, Civil, Section 1217 (1969) 6

STATEMENT OF THE CASE

On March 25, 1987, petitioner Thanh Vong Hoai ("Hoai") filed a 133 page Complaint containing 24 counts against respondents My-Linh D. Soland ("Soland"), Thanh Van Vo ("Vo"), Thach Duy Nguyen ("Thach"), Nguyen Van Minh ("Minh"), Nguyen Thi Bach Luu ("Luu"), Michael S. Arif ("Arif"), Suntech Sunoco, Inc. ("Suntech") and others whose names are unknown. (See Appendix III, Parts C-F). The Complaint was supported by a 285 page Affidavit containing some 804 separate paragraphs. (See Appendix II, Parts A-F and Appendix III, Parts A-B).

On May 8, 1987, upon motion of respondent Soland, the district court dismissed the Complaint as being violative of Rule 8 of the Federal Rules of Civil Procedure.

On May 22, 1987, Hoai filed a 38 page, ten count Amended Complaint containing 149 paragraphs. (See Appendix III, Part G). Count I, at issue before this Court, alleged violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*

Soland and the other respondents again moved to dismiss. The district judge granted the motions and dismissed the Amended Complaint. In dismissing the RICO count with prejudice the judge held that Hoai had not properly alleged the existence of an "enterprise" or a "pattern" of activity which could evidence a RICO violation.

The allegations in the Amended Complaint are complex, rambling, disjointed, and in many cases unintelligible. Significantly, however, those allegations which relate to respondent Soland are relatively few.

Mrs. Soland is an attorney who represented petitioner Hoai for approximately two months during the summer of 1986. According to the Amended Complaint, at the same time or during a portion of the time, she also represented two of the other respondents, Minh and Luu. Hoai alleges that this duality of representation created a conflict of interest; that during this period Soland wrote several letters on behalf of and to Hoai; and that her withdrawal as counsel for Hoai was improper. At best these are allegations of legal malpractice against Soland.

Hoai, however, alleges that Soland was part of a corrupt conspiracy consisting of the other respondents as well as a gang of unknowns called the "cowboys," which conspiracy violated the RICO Act, securities laws and numerous other concepts of common law torts. Yet, notably absent even from Hoai's petition for certiorari are substantial allegations against Soland. In fact the only references to allegations against her appear at pages 15 and 19.[1]

When these allegations are evaluated in light of the pleading requirements for a RICO violation, Soland submits that no cause of action for violation of the RICO Act was stated against her, and the district judge's decision dismissing the case was proper.

---

[1] The allegation of forgery against Soland that appears in a footnote on page 19 of Hoai's petition is neither made in the original, nor Amended Complaints. Therefore, the reference to it in Hoai's petition is wholly improper.

SUMMARY OF ARGUMENT

Hoai's original Complaint in this action containing 133 pages, 367 paragraphs, and 24 counts of rambling allegations was so verbose that neither counsel nor the district court could identify the claims made. It violated the requirements of Rule 8 of the Federal Rules of Civil Procedure that a complaint contain "a short and plain statement" of the claim. Accordingly, it was properly dismissed.

Count One of the Amended Complaint alleged a violation of the RICO Act. To state a cause of action under that Act, certain, "predicate acts" must be alleged which demonstrate a "pattern" of racketeering activity that takes place through an "enterprise." Hoai's Amended Complaint failed to meet any of these requirements.

An "enterprise" must be a continuing unit that functions separate and apart from the racketeering activity in which it engages. Hoai merely alleges loose, undefined associated-in-fact enterprises wherein the respondents are also the enterprises. Those allegations do not satisfy the "enterprise" requirements of the Act.

Similarly, a "pattern" requires that the predicate acts alleged be related and part of a continuous criminal endeavor. They cannot be part of a single fraudulent scheme that has only one victim. Here Hoai only alleges one limited fraudulent scheme with one victim. Such allegations do not rise to a level necessary to satisfy the "pattern" requirement of the Act.

Nor does Hoai set forth any "predicate acts" by Soland which could form the basis of a "pattern" of racketeering activity violative of the RICO Act. Accordingly, Count One was properly dismissed by the district judge.

ARGUMENT

I. The District Judge Properly Dismissed Petitioner's Original Complaint for Violating Rule 8 of the Federal Rules of Civil Procedure.

Hoai filed an initial Complaint in this action that comprised 133 pages containing 367 paragraphs of allegations and 24 separate counts. It was supported by a 285 page Affidavit containing 804 separate paragraphs. On respondents' motion it was properly dismissed.

In his petition for certiorari, Hoai relies heavily on those allegations in the original Complaint and Affidavit. Yet he does not challenge the propriety of that Complaint's dismissal. Rather, he challenges the district court's dismissal of his Amended Complaint for the failure to allege an "enterprise" or "pattern" of racketeering activity. Accordingly, this Court's analysis must be confined to determining whether the allegations in the Amended Complaint meet the pleading requirements.

By continuing to analyze the issues with reference to the original Complaint and Affidavit, Hoai attempts to mislead this Court. That Complaint was not dismissed for failure to properly allege an "enterprise" or "pattern" within the RICO requirements. The only issue considered by the court was whether that Complaint violated Rule 8

of the Federal Rules of Civil Procedure ("F.R.C.P."). It is therefore improper to attempt to buttress his argument that a "pattern" and "enterprise" were properly alleged by reference to that Complaint and Affidavit. And to argue that he could not properly plead a RICO violation in the "sparse, sterile" 38 page Amended Complaint containing 149 paragraphs defies credulity. Nevertheless, it is important that this Court recognize that the original dismissal was proper.

Rule 8(a) F.R.C.P. provides that a pleading setting forth a claim for relief shall contain:

> (1) A *short and plain statement* of the grounds upon which the court's jurisdiction depends . . . (2) *a short and plain statement* of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled . . . (Emphasis added).

Subparagraph (e) of this Rule provides that:

> (1) Each averment of a pleading shall be *simple, concise, and direct* . . . (Emphasis added).

Hoai's initial Complaint directly violated these Rules.

The objective of Rule 8 is to make complaints simpler, rather than more expansive, *Harrell v. Directors of Bur. of Narcotics*, 70 F.R.D. 444, 445 (E.D. Tenn. 1975) (citing numerous cases in support), thus, avoiding situations where a pleading is so verbose that the court cannot identify with clarity the claims made and adjudicate such claims understandingly on the merits. *Id.* at 446.

The majority rule, and that adopted by the Fourth Circuit, requires dismissal of complaints which violate Rule 8. The District Court of Maryland in *Holsev v. Collins*, 90 F.R.D. 122 (D. Md. 1981) noted:

> The instant Complaint . . . [which] places an unjustifiable burden on defendants to determine the nature of the claim against them and to speculate on what their defenses might be, and which imposes a similar burden on the court to sort out the facts now hidden in a mass of charges, arguments, generalizations and rumors, violates the Rule [F. R. Civ. P. 8] . . . , and is subject to dismissal.

Id. at 124, *citing DeFina v. Latimer*, 79 F.R.D. 5, 7 (E.D. N.Y. 1977). See also *Choate v. United States*, 413 F. Supp. 475 (N.D. Ok. 1976).

The *Holsev* court cited an unpublished Fourth Circuit case, *Arev v. Harris*, No. 74-2360 (4th Cir. June 17, 1975) which set forth the rule in that circuit:

> The requirements of a short and plain statement of a claim and simple, concise, and direct averments have been held to be violated by needlessly long, repetitious, or confused complaints.

Id. at 126, citing 5 Wright & Miller, *Federal Practice and Procedure*, Civil, Section 1217 (1969) and other cases. In *Arev*, the Fourth Circuit upheld dismissal of a 125 page complaint.

Hoai's Complaint, a rambling, disjointed, sometimes unintelligible narrative comprising 133 pages, failed to comply with any of the requirements of Rule 8.

> Complaints which ramble, which needlessly speculate, accuse, and condemn, and which contain circuitous diatribes far removed from the heart of the claim do not comport with these goals and this system; such complaints must be dismissed.

Prezzi v. Berzak, 57 F.R.D. 149, 151 (S.D. N.Y. 1972). *See also Brown v. Califano*, 75 F.R.D. 497 (D. D.C. 1977). Accordingly, the district court acted appropriately and within its

discretion in dismissing the original Complaint for violating Rule 8, F.R.C.P.

II. Count One of the Amended Complaint Alleging Violations of the RICO Act Failed to State A Cause of Action, Its Dismissal Was Proper, and Petitioner Has Demonstrated No Compelling Reasons for This Court to Grant Certiorari.

Count I of the Amended Complaint alleges a violation of the RICO Act. Hoai alleges that the respondents violated subparagraphs (a), (b), (c), and (d) of 18 U.S.C. § 1962. (See attachment to Petition for Certiorari). An analysis of the Amended Complaint's allegations in light of the legal requirements to sustain a cause of action for a RICO violation demonstrates that the Amended Complaint is plainly insufficient and was properly dismissed.

To overcome a motion to dismiss, a complaint alleging a RICO violation must be pled with the particularity required in cases alleging fraud. *Estate of Dearing by Dearing v. Dearing*, 646 F. Supp. 903, 914 (S.D. W.Va. 1986); *Taylor v. Bear Stearns and Company*, 572 F. Supp. 667 (N.D. Ga. 1983). A fair reading of this Amended Complaint demonstrates beyond cavil that the allegations have not been so pled. The Amended Complaint simply generalizes and contains conclusory allegations of wrongdoing without any facts that support those allegations.

As a threshold matter, the RICO Act requires that certain "predicate acts" be alleged which demonstrate a "pattern" of racketeering activity that takes place through an "enterprise." An examination of Hoai's allegations demonstrates that he has failed to plead either a

"pattern," "enterprise," or the necessary "predicate acts" to sustain a cause of action for a RICO violation.

A. Enterprise

The requirements to establish an "enterprise" in the Fourth Circuit are clear. In *United States v. Griffin*, 660 F.2d 996 (4th Cir. 1981), that court stated that:

> Proof of the existence of an associated-in-fact enterprise requires proof of a "common purpose" animating its associates, and this may be done by evidence of an "on-going organization, formal or informal," of those associates in which they function as a "continuing unit."

660 F.2d at 1000, quoting *United States v. Turkette*, 452 U.S. 576, 583 (1981). Additionally, the *Griffin* Court emphasized that the association must exist separate and apart from the racketeering activity in which it engages. *Griffin*, 660 F.2d at 999; *See also United States v. Tillett*, 763 F.2d 628, 631 (4th Cir. 1985). That is:

> The ties between the individual associates that are implied by these concepts of continuity, unity, shared purpose, and identifiable structure operate precisely to guard against the danger that guilt will be adjudged solely by virtue of associations not so related. They define the line between "concerted action" through "group association for criminal purpose," for which "combination in crime" may constitutionally be proscribed . . . and less clearly related conduct that may not be so proscribed and prosecuted.

Griffin, 660 F.2d at 1000. *See United States v. Bledsoe*, 674 F.2d 647, 664-65 (8th Cir. 1982).

In *United States v. Bledsoe*, 674 F.2d 647 (8th Cir. 1982), the Eighth Circuit summarized the three basic characteristics of an "enterprise": (1) a common or shared purpose which animates those associated with it; (2) that there be continuity of both structure and personality, that is, that the enterprise function as a continuing unit; and (3) that the enterprise have an "ascertainable structure" distinct from that inherent in the conduct of a pattern of racketeering activity. *Id.* at 665. "The enterprise must be more than an informal group created to perpetrate the acts of racketeering." *Id.* at 663.

The only substantive allegation in the Amended Complaint regarding "enterprises" appears at paragraph 116. (See Appendix III, Part G at pages 450-51). And those "enterprises" listed are merely loose, undefined associations of the various individual defendants. Wholly absent are any allegations that would satisfy the requirements set out in *Bledsoe* or *Griffin*. The associations are not specifically identified, there are no suggestions that they have a continuing operation, that they exist for any purpose other than the racketeering acts allegedly committed by defendants, or that they have any structure or continuity or any particular purpose that unites them.

Moreover, in *United States v. Computer Sciences Corp.*, 689 F.2d 1181 (4th Cir. 1982) the Fourth Circuit adopted the majority rule and held that a defendant could not also be the "enterprise" in question. In that case the court noted:

> There is, however, the remaining problem . . . of whether Congress ever intended in 18 U.S.C. § 1962, that the statute prohibit activities by a person where the activities are described as occurring with any

> enterprise when there was identity between the person, on the one hand, and the enterprise, on the other. We conclude that "enterprise" was meant to refer to a being different from, not the same as or part of, the person whose behavior the act was designed to prohibit, and failing that, to punish.

689 F.2d at 1190. *See also Entre Computer Centers, Inc. v. FMG of Kansas City, Inc.*, 819 F.2d 1279 (4th Cir. 1987); *Atkinson v. Anadarko Bank & Trust Co.*, 808 F.2d 438 (5th Cir. 1987); *Schofield v. First Commodity Corporation of Boston*, 793 F.2d 28 (1st Cir. 1986); *Bishop v. The Corbitt Marine Ways, Inc.*, 802 F.2d 122 (5th Cir. 1986); *Rae v. Union Bank*, 725 F.2d 478 (9th Cir. 1984); *B.F. Hirsch v. Enright Refining Company, Inc.*, 751 F.2d 628 (3d Cir. 1984).

Yet that is precisely what Hoai has alleged in his Amended Complaint, numerous loose associations of the various individual respondents wherein there is identity between the respondents and the alleged enterprises. Accordingly, the allegations of "enterprise" are plainly insufficient.

The only allegation of "enterprise" in paragraph 116 of the Amended Complaint against Soland appears at subparagraph (d): "the enterprise consisting of all the defendants who were associated-in-fact." Clearly that allegation is insufficient to tie Soland to any legitimate "enterprise." None of the required factors set out in *Bledsoe* or *Griffin* have been alleged against her.

In the absence of detailed allegations as to the "enterprise," the RICO count is defective and properly was dismissed. *Tyco Trucking Company, Inc. v. Belk Store Services, Inc.*, 608 F. Supp. 812, 817 (W.D. N.C. 1985). See

also *In Re Action Industries Tender Offer*, 572 F. Supp. 846, 849 (E.D. Va. 1983).

Petitioner has not demonstrated any conflicts among the circuits as to the "enterprise" requirement, nor can he. This defect in the Amended Complaint alone is sufficient reason for this Court to deny the Petition for Certiorari.

B. Pattern

Additionally, to state a cause of action for a RICO violation it is required that there be a "pattern" of racketeering activity. The current interpretation of "pattern" is based upon this Court's treatment of the term in *Sedima v. Imrex Company, Inc.*, 473 U.S. 479 (1985). In *Sedima* this Court noted:

> As many commentators have pointed out the definition of a "pattern of racketeering activity" differs from the other provisions in § 1961 in that it states that a pattern "*requires* at least two acts of racketeering activity," § 1961(5) (emphasis added), not that it "means" two such acts. The implication is that while two acts are necessary, they may not be sufficient. Indeed, in common parlance, two of anything do not generally form a "pattern." The legislative history supports the view that two isolated acts of racketeering activity do not constitute a pattern. As the Senate report explained: "The target of RICO is thus not sporadic activity." The infiltration of legitimate business normally requires more than one "racketeering activity" and the threat of continuing activity to be effective. It is this factor of *continuity plus relationship* which combines to produce a pattern.

473 U.S. at 496, n. 14.

Not only has Hoai failed to set forth the "enterprise" involved sufficiently, he has failed to allege a "pattern" of racketeering activity. As this Court stated, the concept of pattern requires more than two racketeering activities. That is, it must be alleged that the defendants participated in racketeering activity in more than the single instance applied to the case at bar. Where the conduct is part of the same fraudulent scheme, the "continuity" required by the statute is lacking. *See Northern Trust Bank/ O'Hare, N.A. v. Inryco. Inc.*, 615 F. Supp. 828 (N.D. Ill. 1985).

In *International Data Bank, Ltd. v. Zepkin*, 812 F.2d 149 (4th Cir. 1987), the Fourth Circuit articulated its pleading requirements for a "pattern" of racketeering activity in light of *Sedima*. It noted that the "continuity plus relationship" requirement articulated by this Court in *Sedima* requires that the predicate acts be related and be part of a continuous *criminal* endeavor. The court was quick to state that a single, limited fraudulent scheme was not sufficient to satisfy the "pattern" requirement.

> If the commission of two or more "acts" to perpetrate a single fraud were held to satisfy the RICO statute, then every fraud would constitute "a pattern of racketeering activity." It will be the unusual fraud that does not enlist the mails and wires in its service at least twice. Such an interpretation would thus eliminate the pattern requirement altogether.

Id. at 154-155. *See also, One-O-One Enterprises, Inc. v. Caruso*, 668 F. Supp. 693 (D. D.C. 1987), *aff'd*, 848 F.2d 1283 (D.C. Cir. 1988); *Marks v. Pannell Kerr Forster*, 811 F.2d 1108 (7th Cir. 1987); *Torwest v. Dick*, 810 F.2d 925 (10th Cir. 1987); *Superior Oil Co. v. Fulmer*, 785 F.2d 252 (8th Cir. 1986).

The district judge, in dismissing this case, held that Hoai had alleged one single limited scheme to defraud one victim. That ruling was wholly correct. Even viewing the allegations in a light most favorable to Hoai's position, there is but one fraud allegedly perpetrated by these respondents against one individual, Hoai. That the fraud involved the loan of money for the purchase of two businesses, the Sunoco station and the grocery, is not significant. Clearly from the allegations in the Amended Complaint, all of the acts alleged regarding both businesses are interrelated. The Fourth Circuit in *Zepkin* noted that the number of predicate acts is not an appropriate litmus test in determining the existence of a RICO pattern.

> The perpetration of numerous acts of mail and wire fraud "may be no indication of the requisite continuity of the underlying fraudulent scheme."

Id. at 155, citing *Lipin Enterprises v. Lee*, 803 F.2d 322, 325 (7th Cir. 1986).[2]

Rather, the analysis must focus upon the ultimate objective of the scheme of related predicate acts. Where the scheme has a single, limited objective as alleged here – the economic demise of petitioner Hoai – the "pattern" requirement is not satisfied. Such an objective does not evidence "ongoing criminal activity of sufficient scope and persistence to pose a special threat to social well-

---

[2] For example, multiple mailings in furtherance of a single criminal episode are insufficient to allege a pattern of racketeering under § 1961. *Medical Emergency Service Associates v. Foulke*, 633 F. Supp. 156 (N.D. Ill. 1986), *aff'd*, 844 F.2d 391 (7th Cir. 1988).

being." *Walk v. Baltimore and Ohio Railroad*, 847 F.2d 1100, 1104 (4th Cir. 1988). And it is criminal activity to which the RICO statute was designed to apply.

> The pattern requirement was intended to limit RICO to those cases in which racketeering acts are committed in a manner characterizing the defendant as a person who regularly commits such crimes.

Zepkin, 812 F.2d at 155, citing *Lipin Enterprises*, 803 F.2d at 324.

The allegations in the Amended Complaint as they relate to Soland do not evidence any criminal wrongdoing. As the Fourth Circuit in *Zepkin* concluded:

> What constitutes a RICO pattern is thus a matter of criminal dimension and degree. To allow a "pattern of racketeering" to flow from a single, limited scheme such as this one would undermine Congress' intent that RICO serve as a weapon against ongoing unlawful activities whose scope and persistence pose a special threat to social well-being.

Id. at 155.

To the extent that Hoai alleges any "pattern" of activity by Soland, that lone allegation involves undefined "various schemes to defraud various clients by defendant Soland." (Amended Complaint, Paragraph 113(i), See Appendix III, Part G, page 449). To meet the pleading requirement as to a "pattern" of racketeering activity by Soland, the factual elements of the activity must be alleged with specificity. *Dearing*, 646 F. Supp. at 914. Hoai has not done so, nor can he. Rather, in an effort to create a grand conspiracy, Hoai has linked Soland into the scheme through the use of broad generalized allegations. They are plainly insufficient to meet the requirements

that the scheme pose a special threat to social well-being and the dismissal below was proper.

In his petition Hoai relies upon several cases from the Eleventh Circuit which hold that the required predicate acts can occur as part of a single scheme with a single victim and yet satisfy the "pattern" requirements. See *United States v. Hobson*, 825 F.2d 364, 366 (11th Cir. 1987) and *Bank of America v. Touche Ross & Co.*, 782 F.2d 966 (11th Cir. 1986).[3] Such a view is an aberration, is not in consonance with this Court's holding in *Sedima*, and should not serve as a basis for granting certiorari in this case.

In footnote 14 of the *Sedima* opinion, this Court noted that the "pattern" requirement was designed to exclude isolated acts of racketeering activity from the Act's coverage. Rather, the Act required a "continuity" of activity. To adopt the Eleventh Circuit's rule would effectively overrule the *Sedima* holding by reading the "continuity" requirement out of the statute.

Under the Eleventh Circuit's view, two acts of mail fraud which occur in the same limited scheme satisfy the "pattern" requirement without regard to whether the

---

[3] Hoai also cites *4447 Corporation v. Goldsmith*, 504 N.E. 2d 559 (Ind. 1987) and *State v. Sappenfield*, 505 N.E. 2d 504 (Ind. 1987) two cases currently pending before this Court as evidence of a split in the circuits as to the "pattern" requirement. Both deal, however, with an Indiana Statute and specifically whether obscenity violations can constitute predicate acts under that state's RICO statute. These cases have absolutely no bearing on issues before this Court in the case at bar.

defendants have engaged in any other racketeering activities with different victims. That view would effectively permit any garden variety fraud case to satisfy the requirements for a RICO violation. Yet Congress' expressed intent in drafting the RICO Act was to provide a weapon to be used against *ongoing* unlawful activities. *Zepkin*, 812 F.2d at 155. This Court recognized that intent in *Sedima* in articulating the "continuity" requirement. The Eleventh Circuit's rule clearly violates congressional intent as well as the pronouncements of this Court on the issue.

While petitioner has indeed identified a split in the circuits on this issue, this Court should not grant his petition in this case. Throughout this brief in opposition, counsel has demonstrated the numerous deficiencies in Hoai's Complaint and Amended Complaint, deficiencies which if evaluated alone demonstrate the correctness of the district court's actions. Taken individually they provide sufficient reason to deny Hoai's petition. The "pattern" argument is not critical to sustaining the lower court's actions. A resolution of the proper interpretation of the "pattern" requirement would be better left to another case.

C. Predicate Acts

The "pattern" element of the RICO Statute requires the commission of more than one "predicate act" of racketeering activity. The types of activities which satisfy this requirement under the RICO Act are those illegal activities for which an individual may be prosecuted. (See 18 U.S.C. § 1961). "Congress did not intend for RICO to be

used by private plaintiffs to claim treble damages for ordinary violations of criminal and tort laws." *In re Action Industries Tender Offer*, 572 F. Supp. 846, 850 (E.D. Va. 1983).

In this case, Hoai has alleged three such types of racketeering involving Soland: mail fraud; wire fraud; and obstruction of justice. For mail fraud, it is alleged that Soland mailed a total of six letters to Hoai, Suntech, McLean Bank, and Vo. While the dates of these letters are set forth in the Amended Complaint, no other information regarding them is furnished. (See Appendix III, Part G, paragraphs 97 and 102, pages 439 and 441-42).

Serig v. South Cook County Service Corp., 581 F. Supp. 575 (N.D. Ill. 1984), involved a RICO claim based upon mail fraud. In *Serig*, the plaintiff had not disclosed the contents of the letters at issue in the complaint. The court held that to maintain the cause of action it was necessary for plaintiff to set out the contents of the letters, specify in what respect each of the statements were false and misleading, and the factual bases for believing that the defendants acted with an intent to defraud. *Id.* at 580. That required information is absent from Hoai's Amended Complaint.

Clearly, the mail fraud statute prohibits acts made criminal by state or federal law and "any plan, consummated by the use of the mails, in which artifice or deceit is employed to obtain something of value with the intention of depriving the owner of the property." *United States v. Kreimer*, 609 F.2d 126, 128 (5th Cir. 1980). However, "the mail fraud statute does not taint every breach of business contract . . . but only condemns acts that are

planned or calculated to deceive." *Id.; see also Serig*, 581 F. Supp. at 579. Here Hoai's allegation is simply that two business deals did not evolve as expected. His attempt to convert this breach of contract action into a RICO violation is disingenuous.

Moreover, letters written and mailed by a lawyer in the course of representing a client cannot form the basis for a mail fraud action. *McMurtry v. Brasfield*, 654 F. Supp. 1222, 1226 (E.D. Va. 1987). In *McMurtry*, the plaintiff charged his wife's divorce attorney with a RICO violation based upon mail fraud. Judge Cacheris of the Eastern District of Virginia cited with approval language from the U.S. District Court of Delaware in *Paul S. Mullin & Associates, Inc. v. Bassett*, 632 F. Supp. 532, 540 (D. Del. 1986).

> The Court finds absurd plaintiff's apparent suggestion that a lawyer's act in posting a letter which states a client's legal position in a dispute can constitute mail fraud. If such were the situation, every dispute in which the parties' counsel exchanged letters could give rise to RICO litigation. Such activity simply is not fraudulent.

McMurtry, 654 F. Supp. at 1226. In dismissing the RICO count, Judge Cacheris noted:

> To allow lawyer communication in pending litigation to constitute mail fraud would chill effective representation and would give rise to a number of collateral suits. Congress did not intend that mail fraud statute to sweep so broadly with such detrimental effects on attorney representation and the orderly administration of justice.

Id.

While the allegations in this case do not involve letters written during actual litigation, the letters apparently were written on behalf of Hoai in the course of Soland's representation. The analysis and rule articulated in *McMurtry* should be equally applicable to the case at bar. The letters referenced in Hoai's Amended Complaint are not fraudulent. Rather, they were written in the course of representation of Hoai by Soland and cannot serve as "predicate acts" supporting a "pattern" of activity violative of the RICO Act.

Similarly, the only allegation of wire fraud against Soland in the Amended Complaint is at paragraph 92 which alleges in part: "She participated in interstate telephone calls to further the frauds involved with each of the businesses." (See Appendix III, Part G, pages 436-37). There are no allegations as to the substance of these telephone calls or how they were fraudulent. As with the allegations of mail fraud, this conclusory sentence falls far short of the particularity required to state a cause of action for fraud. Accordingly, as pleaded, wire fraud cannot serve as a type of racketeering activity which would be a basis for a RICO complaint against Soland.

The third type of racketeering activity alleged against Soland in the Amended Complaint is obstruction of justice. (Paragraph 111, See Appendix III, Part G, page 446). In particular this relates to the allegations in paragraphs 92, 93, and 97 of the Amended Complaint which involve Soland. These paragraphs, however, only allege that Soland wrote some letters during the time between May 28, and late August, 1986. There are no allegations as to the contents of these letters nor how they would constitute conduct which would subject Soland to a criminal

charge of obstruction of justice. As with mail and wire fraud, the Amended Complaint is plainly deficient as to this allegation.

In sum, then, there are no predicate acts of racketeering activity properly pleaded against Soland in the Amended Complaint which would support the RICO Count. Accordingly, it was properly dismissed.

D. The Amended Complaint Fails to State a Cause of Action for RICO Violations Against Soland Under any Parts of 18 U.S.C. § 1962.

Lest that not be sufficient, there are other deficiencies in the pleading of the RICO count. As stated, Hoai alleges violations of 18 U.S.C. § 1962 (a), (b), (c), and (d). To violate 18 U.S.C § 1962(a), it is necessary to show that the defendant received and continued to receive income derived from patterns of racketeering activity and used or invested part of such income to acquire an interest in, establish and operate enterprises which affect interstate or foreign commerce. There are no allegations in the Amended Complaint that Soland received any income whatsoever from a pattern of racketeering activity or that any such income was used or invested to acquire an interest in, establish or operate enterprises which affect interstate or foreign commerce.

To violate subparagraph (b) of § 1962, it is necessary to show that the defendant, through a pattern of racketeering activity or through collection of an unlawful debt, acquired or maintained directly or indirectly, an interest in or control of one or more enterprises which are

engaged in or which affect interstate or foreign commerce. As stated, Hoai has not sufficiently identified *any* enterprises involving defendant Soland. Certainly, there are no allegations that Soland has acquired an interest, directly or indirectly, in or control of any enterprise engaged in interstate or foreign commerce.

Nor are there any allegations which support a claim that Soland violated § 1962(c). Subparagraph (c) requires that the defendant be employed by or associated with an enterprise engaged in interstate or foreign commerce and that the individual "conduct or participate" directly or indirectly in the conduct of such enterprises and affairs through a pattern of racketeering activity. The Fourth Circuit in *United States v. Mandel*, 591 F.2d 1347 (4th Cir. 1979) addressed the requirements of the "conduct or participate" language of this subparagraph and held that this required some involvement in the operation or management of a business (enterprise). *Id.* at 1375. The Amended Complaint does not contain any allegations that Soland had any management position or role in any enterprise.

A complaint which merely mimics the wording of the RICO statute without setting forth the facts to support the contentions is subject to dismissal. *Production & Leasing, Ltd. v. Hotel Conquistador, Inc.*, 573 F. Supp. 717 (D. Nev. 1982), *aff'd*, 709 F.2d 21 (9th Cir. 1983); *Adair v. Hurst International Resources Corp.*, 526 F. Supp. 736 (N.D. Ill. 1981). That is precisely what Hoai has done here. For the myriad of reasons set forth, Count I is defective and was properly dismissed.

CONCLUSION

Petitioner has failed to set forth any compelling reasons for this Court to grant certiorari and review the case in full. To the contrary, the initial Complaint in this action violated Rule 8, F.R.C.P., and was properly dismissed.

Similarly, the Amended Complaint fails to state a cause of action for violation of the RICO Act by failing to set forth a "pattern" of activity in support of an "enterprise" which violated the terms of the statute. Accordingly, its dismissal below was proper.

For the reasons expressed herein, respondent Soland respectfully requests that this Court affirm the actions of the district and circuit courts below and deny petitioner's request.

Respectfully submitted,

W. MICHAEL HOLM
Counsel for Respondent
My-Linh D. Soland
HAZEL, THOMAS, FISKE,
BECKHORN & HANES, P.C.
510 King Street
Suite 200
Alexandria, Virginia 22314
(703) 838-5144

(18)

Supreme Court, U.S.
FILED
JAN 4 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-765

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

THE REPLY BRIEF OF PETITIONER THANH VONG HOAI to RESPONDENT SOLAND'S BRIEF IN OPPOSITION

Laurence A. Elgin *
John D. Hemenway
4816 Rodman St., N.W.
Washington, D.C. 20016
(202) 371-6710

*Counsel of Record

January 4, 1989

25 pp

TABLE OF CONTENTS

HEADING	PAGE
TABLE OF CONTENTS	TCON-1
TABLE OF AUTHORITIES	TAUT-1
I.MISREPRESENTATIONS	1
II.THE PATTERN ARGUMENT	6
A. GENERALLY	6
B. WITH REGARD TO SOLAND IN PARTICULAR	10
III.	13
IV. ENTERPRISE	16

TABLE OF AUTHORITIES

HEADING	PAGE
CASES	
Bank of America v. Touche Ross & Co. 782 F2d 966	8
California Architectural Building Products, Inc. v Franciscan Ceramics, Inc. (CA9 1987) 818 F2d 1466	8
In re Action Industries Tender Offer (ED Va 1983) 572 F Supp 846	9
In re Shargel (CA2 1984) 742 F2d 61	13
In the matter of Klein (SD Ind 1985) 608 F Supp 538	13
Kimmel v Peterson (ED Pa 1983) 565 F Supp 476	19
Lipin Enterprises v Lee (CA7 1986) 803 F2d 322	6
Sedima, S.P.R.L. v. Imrex Co. 473 US 479 (1985)	8,9,10,
Superior Oil Co. v Fulmer (CA8 1985) 785 F2d 252	4
United States v. Bronston (CA2 1981) 658 F2d 920	13
United States v. Employing Plasterers' Assn. of Chicago	

(1954) 347 US 186 16

United States v. Lemm
(CA8 1982) 680 F2d 1193 19

United States v. Witherspoon
581 F2d 595 (CA 7 1978) 9

STATUTES and RULES

RICO SERIATIM

18 U.S.C. 2 13

RULE 8, FRCivP 1,2,4

TREATISE

Wright & Miller, Federal Practice and Procedure, Civil, Sec. 1217 (1969) 15

REPLY BRIEF OF PETITIONER HOAI

I. MISREPRESENTATIONS

There's a misrepresentation in the opposing brief (OB) of respondent Soland which substantially impacts the arguments and, therefore, must be pointed out. See the statement (p.1) that the district court, on May 8, 1987, "dismissed the complaint as being violative of Rule 8." An examination of the Order (Annex 1, p.1) will reveal that the judge said nothing about Rule 8; he referred to his reasons given from the bench. They do not mention Rule 8. (Ann. 1, p.8) His reasoning, as set out in pp. 13,(bottom) - 15, reveal that his criticism was: pleading "10 separate RICO conspiracies. What you're representing here, you don't have that." He pressed the point, which he had raised from earlier, that there was only one scheme. ("Why isn't that one

scheme as opposed to two?") This was a notion he had clearly been preoccupied with from the outset when he early on began to interrupt argument. He made it clear (bottom p. 14) that he didn't like the "130-some pages" of the complaint and that he "got a little aggravated after the 35th page [of a RICO complaint]." Immediately after he said: "I think this thing has got to be redone and brought into focus as to what you're doing. You do have to set forth the fraud act, your Rico count with particularity, but alleging 10 separate Rico conspiracies with all the repetition involved in that when in fact what you've got is one -- you say two separate conspiracies." He then dismissed and allowed petitioner to orally move to amend within 10 days. Thus, though the motion he granted relied, inter alia, on Rule 8, his

reasoning was that the complaint showed 10 RICO conspiracies where he saw only one. So he immediately decided that there was a single scheme here and that for that reason and not for a Rule 8 reason per se the complaint should be drastically reduced. Since petitioner contends that in so doing the district court judge ignored the law in other circuits, cited in our opening brief, that separately indictable offenses, or elements of those offenses, constitute the RICO predicate acts in many circuits, it is apparent that if we are correct in that contention the error began at the May 8, 1987, hearing and continued thereafter and, indeed, that a good deal of the error we assign afterward was a foregone conclusion once this decision to force the complaint into alleging a single scheme within 35 pages or so was

made. Respondent Soland would have it that he found the complaint so utterly incomprehensible that he threw it out for violating Rule 8 like the treatment accorded many complaints by nuts or "jailhouse" lawyers. As the Court can see, that isn't what happened. The judge merely pre-decided the very issue which has led to this petition, i.e., single scheme a la Superior Oil Company v Fulmer (CA8 1985, 785 F2d 252) as opposed to allowing separately indictable offenses to stand as predicate acts, and then went from there.[1] It misleads to represent to the contrary. The compressed complaint that was ordered by the judge below was just over 35 pages as demanded and, if anything, is simply too sparse. The

[1]It is significant in this regard that the other 6 named defendants all answered this supposedly incomprehensible original brief and it was only after Defendant Soland raised the Rule 8 issue that they joined in.

statement (OB, p. 1, bottom) that its allegations are "complex, rambling, disjointed, and in many cases unintelligible" are inconsistent argumentation, not a statement of the case.

Misrepresentations, not as substantial or prejudicial, continue on p.2. The legal representation alleged by Soland, e.g., was from May 28 to August 18.[2] A legal conclusion about malpractice is obviously not a statement of the case. A more definite statement as to Soland and her involvement was contained in the original complaint as a separate count[3]. Thus when the judge demanded the elimination of such separate counts the

[2]The forgery spoken of was of a false letter of dischage which would have terminated the representation on July 15, were it not a forgery presented after the fact.

[3]Under applicable case law, the remedy for lack of detail is a more definite statement not dismissal.

counts for the lesser of the figures in the schemes, as opposed to the central 4, had to be summarized rather sparingly by comparison. It is thus not accurate to even imply that Soland did not know what was alleged against her.

II. The Pattern Argument

A. Generally

The district judge, from the outset, was taken with the notion that there was only a single scheme alleged and, therefore, no "pattern" of racketeering activity as required. This was the paramount concern of the appellate panel in its questioning during oral argument. In this answer (OB p. 13) Soland says:

> The district judge, in dismissing the case, held that Hoai had alleged one single limited scheme to defraud one victim.

Soland argues that because, as stated in Lipin Enterprises v Lee 803 F2d 322 (CA7 1986), numerous acts of mail and wire

fraud may not have the requisite "underlying" continuity to be a RICO violation, Hoai has not alleged a RICO violation. This contention is confused and erroneous. It reflects the reasoning of the district judge. The pattern requirement is obviously that there must be a pattern. With no continuity there is no pattern. If would be a shortcoming if there were not the continuity, i.e., the connections between the acts, is what the 7th circuit said, not that it would be a shortcoming that there was continuity. Further, Soland blithely ignores that Hoai has alleged many more predicate acts than just fraud, including threats of murder, interference with commerce, extortionate credit transactions and others. While opposing counsel may view the 11th circuit view as aberrant, there clearly is, as we have

shown, a split between the circuits and a need for clarification on this point.[4] With due respect the "single limited objective" idea (OB 13) doesn't apply. The most archetypal mafia activity that prompted the RICO law could be shoehorned into that entirely too abstract and metaphysical definition by a trial judge as eager to do so as this one was. What this Court noted in Sedima v Imrex Co., Inc. 473 US 479 (1985) was that a pattern requires at least two separate acts of racketeering activity. The lower court judge and Soland here appear to interpret that to mean that a pattern requires two separate patterns. In quoting Sedima

[4]In the 9th Circuit, e.g., it is not even required that the predicate acts not be part of the same "criminal episode" in order for them to constitute a pattern. California Architectural Bldg. Prods., Inc. v Franciscan Ceramics, Inc. 818 F2d 1466 (CA9 1987). Also the 11th Circuit: Bank of America Nat'l Trust & Savings Assn. v Touche Ross & Co. 782 F2d 966, 971

Soland only shows what we contend, that the separate acts must be related in some way, i.e., have a common purpose or connecting thread. The district judge seems to be saying that the two-or-more acts must be related and unrelated at the same time. This is simply a rewrite of the effort this Court struck down in Sedima to erect a requirement never intended by Congress that would help judges in avoiding these tough cases, even when they are clearly within the scope of Congress' intent.[5] Such a standard would be no standard at all. Like the requirement of racketeering

[5]Indeed, it would appear that not only is there a split between the circuits here, there is even a split in the Eastern District of Virginia. For Judge Williams, in In re Action Industries Tender Offer 572 F Supp 846 acknowledges that "Each act of criminal activity could be counted as an act of racketeering activity, even if numerous acts arise out of the same scheme. See, e.g., United States v. Witherspoon, 581 F.2d 595, 601-601 (7th Cir.1978)."

injury or that of prior convictions for the predicate acts, it would strike down what Congress intended. We don't presume to tell the Court what it meant, but if plain language means anything, Sedima seems to stand for the proposition that the imposition of such requirements as imposing a "racketeering injury" requirement contradicted not only:

> Congress' self-consciously expansive language and overall approach, ...but also ...its express admonition that RICO is to "be liberally construed to effect its remedial purposes." [473 US at 3286 (quoting P.L. 91-442, Sec. 904(a))
> ...
> The statute's "remedial purposes" are nowhere more evident than in the provision of a private action for those injured by racketeering activity.

B. With Regard To Soland In Particular

Soland argues as if by showing that she personally did not commit all of the predicate acts which constitute the pattern, but only a few, she could avoid

liability. Her argument interweaves arguments from cases with the lesser number of the acts specifically alleged against her as if a reader would not be astute enough to distinguish between the pattern as established by the principal players and her participation in the scheme. She didn't participate in all of the predicate acts. The precise details of her participation were set out in Count V. of the original complaint which is specifically entitled: "COUNT V: RICO: MY LINH SOLAND: AGGRAVATION: AIDING AND ABETTING: ADDITIONAL WIRE FRAUD". The original complaint followed the logical scheme of setting forth the allegations concerning the two peripheral characters, Soland and Arif, in their own separate counts <u>after</u> setting forth the principal scheme and the central players. But if the Court will but read this original

count against Soland it will find it coherent and precise.(App.III (Suppl.) Part F, pp.335-50, Arif, pp.351ff.) She used phone calls from Virginia to the station in D.C. to deceive plaintiff and forward the fraud and extortion as well as independently using two letters to deceive, which are described, on her own. She aided and abetted. She also has her subsection (b) in the general allegation count, Count I. Id. Part C, pp. 170-172. When the judge commanded the elimination of the separate counts, the allegations against Soland had to be summarized in a few lines. But it doesn't follow that She can persuade the court to eliminate the detail by draconian reduction and then get off because the resulting concision eliminates prior detail. If she wanted it she had a more definite statement saying what the details are of

the allegations. Applicable, persuasive authority is in United States v Bronston 658 F2d 920 (1981). The key is, and the allegations against Soland are clear on this, the use of the trust necessarily reposed in an attorney by one led by deceit to believe his interests are being represented to deceive in a manner that creates participation in the pattern of racketeering activity. Though here Soland both participated in the pattern created by others[6] and committed predicate acts on her own. In the matter of Klein 608 F Supp 538 (SC Ind 1985); In re Shargel 742 F2d 61 (CA2 1984).

III.

Ms. Soland states (OB, p. 4) that:

[6]In addition to the well known law on aiding and abetting there is here a specific statutory provision, 18 U.S.C. 2 that provides, with regard to all the federal predicate acts that makes her a principal in the acts of the others.

> this Court's analysis must be confined to determining whether the allegations in the Amended Complaint meet the pleading requirements."

No authority for this ukase is given. Small wonder. Is is transparent that respondent would have the Court believe that if but the defendant can get a judge who is hostile to the Act to order a drastic reduction of the size of the complaint attacking a complicated RICO conspiracy, then he or she can make the prior allegations that gave the necessary detail required in pleading fraud vanish into a memory hole, as if knowledge were thereby wiped from the defendant's brain. This is against the purpose of the rules. Worse, it promotes sandbagging a plaintiff when spirit of the statute and the spirit of the rules are against such tactics. If Ms. Soland wants a more definite statement, she knows where she

can get it and has already seen it.

Respondent Soland cites Wright & Miller Federal Practice and Procedure, Civil, Section 1217 (1969). Perhaps counsel should have looked a little further in the treatise, ibid. at Sec. 1218. He would have found that the courts of today often overlook evidentiary material in a complaint and even have found evidentiary allegations helpful. And that while it is true that occasionally a pleading contains a plethora of detail and fails to connect it together with the result that the defendants cannot decipher the statements that the only remedy is to require repleading. "It always should be borne in mind that the federal rules reflect the judgment that polishing the pleadings by means of motions practice rarely is worth the effort." Further, where as here, the modern practice is

ignored and the court allows such antique practices, forcing the elimination of evidentiary fact, another rule, long since held by this Court, comes into play. "[D]ismissal of a civil case for failure to set out evidential facts can seldom be justified." United States v Employing Plasterers' Assn. of Chicago 347 US 186 (1954) at 188-189. It is clear that what Soland argues, and what was imposed by the lower court, is an outworn concept of pleading as a "maze" which must be threaded just right or Alice shall lose her head.

IV. Enterprise

A similar argument is used to show that there was no enterprise alleged. The allegations in the amended complaint, she points out, are conclusory and, again, we are told, with wonderfully through-the-looking-glass logic, that we can't know

the myriad of detail that was alleged in the original complaint because of the order of May 8, 1987. (Also appealed, but that is ignored in her argument). The old memory hole has got those allegations and you and I are not allowed to know they existed. This isn't law or justice, this is a tragic game, in which the purpose of the Congress in passing the RICO statute is not only being ignored, it is being mocked. A reading of the transcript excerpts from the May 8, hearing, the "reasons from the bench" for the order of that date from which we appeal, reveals that the contention that there was a lack of showing of enterprise was secondary. Once the judge decided to find no pattern of racketeering activity because all was a single scheme, the idea that there was no enterprise shown as was thrown in on the second go round.

Again, we are not in the business of telling this Court what it meant in Sedima but we think Soland's attempt to do so is wide of the mark. In Sedima the Court indicated that the evidence of the pattern and of the enterprise might "coalesce." Most of us would take this plain language to mean that though these are two separate things, the victimized party might come to know of them both through the same series of events, just as a symbol may tell us of two different things in a poem or the sun in summer might tell us both that the day is going to be hot and the solar system is functioning as usual. But this sort of reasoning that we all know was apparently beyond the ken in this instance. That the two things -- enterprise and pattern -- are separate though the evidence of them both coalesce, was understood by the

8th circuit in United States v Lemm 680 F2d 1193 (1982). There, as here, the "enterprise" consisted of a "loose federation of persons involved". id. 497. There it was a fraud ring, though arson was its game instead of phony flooding, extortion and all the other activities alleged of the ring in this case. The Lemm case was in turn cited in Kimmel v Peterson 565 F Supp 476, 495 (ED Pa 1983) where the court addressed the very argument advanced by Soland here, i.e., that the pattern and enterprise are indistinguishable, to which the court replied that such argument "misperceives the nature of both the law and the facts". As that court put it, the enterprise may in this situation "collapse into" the predicate acts. The real test is to ask, as was done in Lemm: If we eliminate, for purposes of

argument, a particular set of predicate acts, will the group go on and continue activity that is illegitimate though not committed through those predicate acts. The answer here is yes. Suppose the wire and mail fraud eliminated. The group still would have gone after Hoai's businesses and their other insurance and real estate scams would have gone on. They were out to get what they could and Hoai just happened into their sights.

Respectfully submitted.

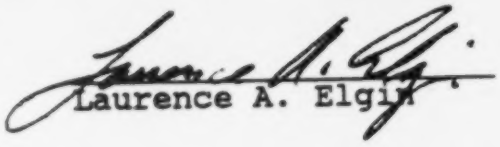
Laurence A. Elgin
4816 Rodman Street, N.W.
Washington, D.C. 20016

On the brief:
John D. Hemenway
4816 Rodman Street, N.W.
Washington, D.C. 20016

CERTIFICATE OF SERVICE UNDER RULE 28

I hereby certify that I am a member of the bar of this Court (formerly at 2762 Woodley Place, N.W., Washington, D.C. 20008) and that I have served by United States mail, first class, postage

prepaid, this 4th day of January, 1989, true and accurate copies of the foregoing Petition for the Writ of Certiorari, together with the accompanying appendices, 3 copies for each defendant separately represented, upon the following counsel of record below:
Alan Yamamoto, Esquire, 9677 Main Street, Suite B, Fairfax, Virginia 22030; Alan Croft, Esquire, P.O. Box 547, Fairfax, Virginia 22030; Thomas A. Gentile, Esquire, P.O. Box 612, Arlington, Virginia 22216.



Laurence A. Elgin